KENTUCKY

GOVERNMENT

Prepared by

C. Gilmore Dutton
Jamie Jo Franklin
Gregory A. Freedman
Joyce S. Honaker
Norman W. Lawson, Jr.
William N. Wiley
Rob Williams
Ginny Wilson, Ph.D.

Informational Bulletin No. 137

Legislative Research Commission
Frankfort, Kentucky
December, 1994

FOREWORD

State and local governments tend to reflect the conditions ~d needs of the citizens they serve. State government is also impacted by federa3 policies and by national and global conditions, while loca1 government are affected by state policies, As these influences change, the functions and structures of state and local governments tend to change accordingly.

The Informational Bulletin "Kentucky Government" deals with Kentucky's governmental functions and structures. The first Bulletin authored by Professor John Reeves in 1949, underwent five revisions, the **last being in** 1973. In l977, the **Legislative** Research Commission contracted v:ith Eastern Kentucky University for the services of General Arthur Lloyd and Professor J. Allen Singleton for a complete rewrite of the text. Their work was published in October, 1980.

The current publication **is** the first revision of the 1980 Bu1letin. Substantial changes have taken p1ace in Kentucky's state, municipal and county governments during the 1ast fourteen years, thus entailing in many cases, substantial revisions of the earIier chapters.

The revision was done by staff of the Legislative Research Commission. Gilmore Dutton coordinated the revision efforts. David Witt was responsible for updating Chapter I; Rob Williams, Chapters 2, 3 and 4; Mr. Dutton, Chapters 5 and 6; Greg Freedman, Chapter 7; Norman Lawson, Chapter 8; Joyce Honaker, Chapter 9; Bill Wiley, Chapter 10; and Jamie Franklin Chapter 1 L. Special thanks are due to Charlie Bush, who edited the document, and to Rose Mack, who coordinated the typing of the text.

VIC HELLARD, JR.
Director

The Capitol
Frankfort, Kentucky
December, 1994

CHAPTER I

INTRODUCTION

As an introduction to government in Kentucky, this chapter presents a brief profile of the state and its people. The profile considers the geography, population, and economy of the Commonwealth. Together, these contours of land, people, and livelihood give shape to public policy and political life throughout the state. The information is presented historically and comparatively – in terms of both change and stability over time, and relative to other states and to the nation as a whole.

A table summarizing the data presented appears on the final page of the chapter.

Geography

Kentucky's over 40,000 square miles rank it 37th in area among the states – between Tennessee (36th) and Indiana (38th). While not a large state, it is a diverse one geographically. Three distinct geographic areas are represented in Kentucky: the Gulf Coastal Plain in western Kentucky; the Interior Low Plateau of central Kentucky, including the Lexington Plain (or Bluegrass) and the Highland Rim (or Pennyrile); and the Appalachian (or Cumberland) Plateau of eastern Kentucky.[i]

Nearly 50 percent of Kentucky's land area is forested. The state's elevation ranges from a high of 4,145 feet, on Black Mountain in southeastern Kentucky (Harlan County), to a low of around 260 feet, along the Mississippi River in the southwest corner (Fulton County).[ii] Kentucky's major lakes were created by dams and are an important source of tourism in the state. In addition to the state's system of 47 parks and recreation areas, the National

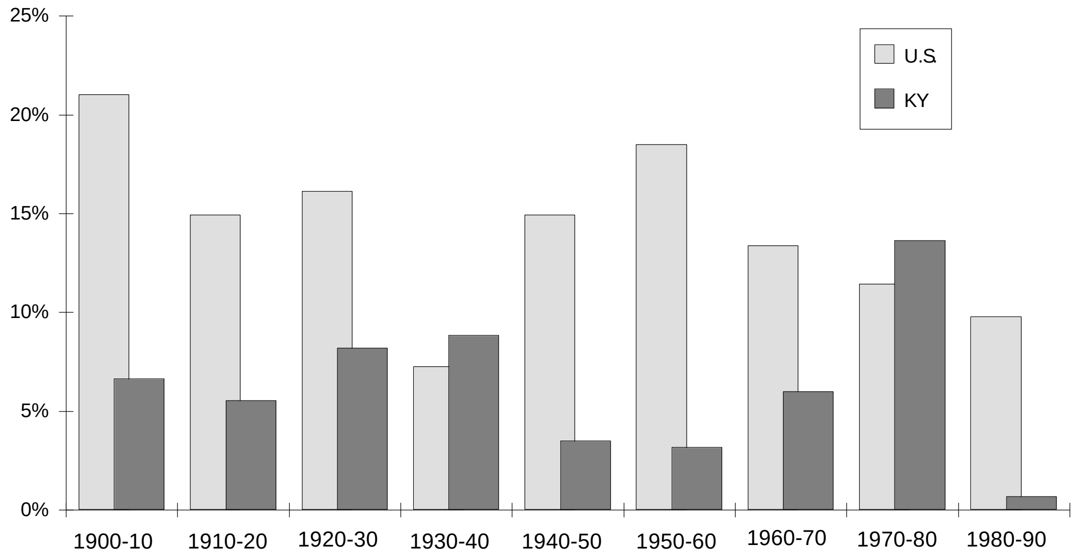
Park Service operates three sites: Mammoth Cave National Park, Abraham Lincoln Birthplace National Historic Site, and Cumberland Gap National Historic Park. The longest known cave system in the world, Mammoth Cave is the state's most popular tourist destination, with over 2½ million visitors reported in 1993.[iii]

Population

Growth

Kentucky's population was almost 3.7 million in 1990, ranking it 23rd among the states. That ranking was unchanged from the previous two Census counts (1970 and 1980). Kentucky has not shared generally, and in the 1980's in particular, in the ongoing shift of the nation's population from the Northeast and Midwest to the South and West. Although the state's population grew faster in the 1970's than the country's, its growth fell far short of that of the South overall.[iv] During the 1980's, Kentucky barely grew at all: a nearly stagnant 0.7 percent, compared with 9.8 percent nationally and 13.4 percent for the South.[v] The following figure compares population growth for Kentucky and the U.S. from 1900 to 1990. As can be seen, the state outgrew the nation during two decades of the century, the 1930's and 1970's.

KENTUCKY VS. U.S.:
POPULATION GROWTH
1900 - 1990



Sources: *Encarta* multimedia encyclopedia (Microsoft, Redmond, WA), 1994; U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993*.

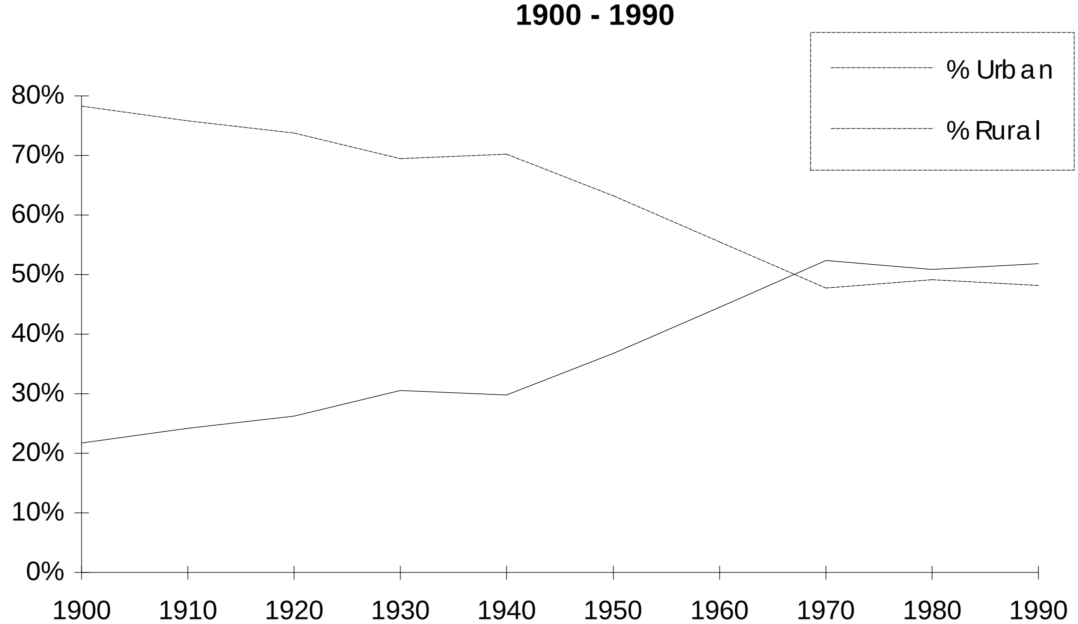
Composition

Kentucky's population is slightly more female and far more racially homogenous than the nation's. Of the 3.685 million Kentuckians in 1990, about 51.6 percent were females and 48.4 perent males — vs. 51.3 percent female and 48.7 percent male for the U.S. Whites comprised 92 percent of the state's population, and blacks 7 percent — compared with 84 percent white and over 12 percent black for the nation. People of Hispanic origin (any race) comprised 0.6 percent of Kentucky's population and nearly 9 percent of the country's. In terms of aged population, Kentucky is nearly a perfect representation of the country: 12.7 prcent of Kentuckians were over 65 in 1992, a proportion exactly that of the U.S. overall and in the very middle (25th) among the states.[vi]

Residence

Although Kentucky is one of the most rural states in the country, the majority of its population live in areas classified as urban by the Census Bureau. In 1990, almost 52 percent of Kentuckians lived in urban areas. The state's transition from majority-rural to majority-urban occurred in the 1960's. Since that transition, however, Kentucky's urban-rural mix has remained fairly stable. In fact, the percent of urban residents in the state peaked with the 1970 Census, and has dipped slightly since. The figure below shows how Kentucky's population has changed over time by urban and rural residence.

KENTUCKY'S POPULATION BY URBAN AND RURAL RESIDENCE 1900 - 1990



Source: *1994 Kentucky Deskbook of Economic Statistics* (Kentucky Cabinet for Economic Development, Frankfort, 1994).

While the majority of Kentuckians are classified as urban, the state is quite rural in relative terms. In 1990, Kentucky had the 8th highest percentage of rural residents among the states, and the 4th highest in the South (West

Virginia, Mississippi, and North Carolina were more rural). Kentucky's population that year was almost twice as rural as the overall population of the U.S. (48.2 percent vs. 24.8 percent).[vii]

The federal Office of Management and Budget defines a metropolitan area as a large population center along with any adjacent counties which are highly integrated with the center. Seven metro areas, representing 21 Kentucky counties, are located wholly or partially within the state: Cincinnati, Louisville, Lexington, Owensboro, Huntington(WV)-Ashland, Clarksville(TN)-Hopkinsville, and Evansville(IN)-Henderson. In 1990, just under half (nearly 48 percent) of Kentuckians lived in these seven metro areas.[viii] All but one – Lexington – are located on the state's border. Over half (55 percent) of Kentucky's population in 1990 lived in counties bordering other states.[ix]

In sum, then, Kentucky's population is nearly evenly split between urban and rural and between metro and nonmetro. However, compared with the country as a whole, which is predominantly urban (75 percent) and metro (79 percent), the Commonwealth is decidedly rural and nonmetro. Only 7 states are more rural, and 11 states less metro, than Kentucky.

Economy

Kentucky can claim several economic superlatives. The Commonwealth leads the nation in the production of whiskey and burley tobacco (and ranks second behind North Carolina in overall tobacco production). It is also the world capital of the Thoroughbred industry, both in tradition and by such measures as foal production and yearling sales.[x] Until 1988, Kentucky led the nation in coal production. It has ranked second to Wyoming since then (except in 1992, when it fell to third behind West Virginia as well). Kentucky is the only state with coal production in two of the nation's three major coal basins: its

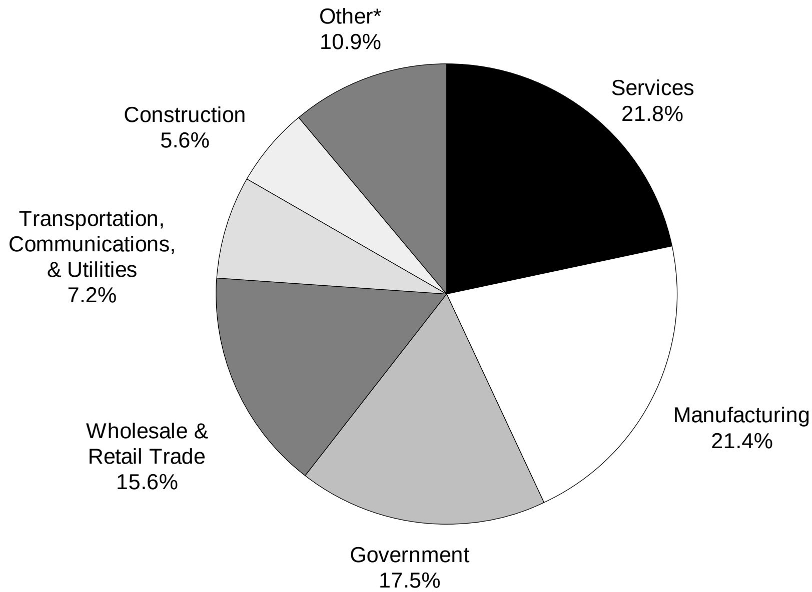
Eastern Coal Field lies in the Central Appalachian basin, and its Western Coal Field in the Interior, or Illinois, basin.

A look at Kentucky's industrial makeup reveals important historical trends, as well as notable similarities and variances with the national economy. Just as the population's residence is measured by two yardsticks — urban/rural and metro/nonmetro — the industrial mix of an economy is often measured by earnings and by employment. Both measures are considered here.

Earnings

Kentucky's rural status has often carried the reputation of a farming economy. As with its rural standing, Kentucky's agricultural standing is a matter of absolute and relative terms. In absolute terms, the label is long outdated: not since the 1940's did farming comprise the largest share of the state's earnings. Services and manufacturing are now Kentucky's leading sources of earnings, and farming is its next to smallest (only Agricultural Services, Forestry, and Fisheries — a single industry — is smaller). The following pie chart shows Kentucky's economy by industry earnings in 1992.

KENTUCKY'S ECONOMY
BY INDUSTRY EARNINGS (1992)



*Other:
Finance, Insurance, and Real Estate: 4%
Mining: 3.4%
Farming: 2.9%
Agricultural Services, Forestry, and Fishery: 0.6%

Source: Kentucky Cabinet for Economic Development, *1994 Kentucky Deskbook of Economic Statistics*.

In 1992, earnings in Kentucky totaled almost $45 billion. Of that, services accounted for the largest portion (nearly 22 percent), manufacturing for slightly less (21.4 percent), government for 17.5 percent, and wholesale and retail trade for 15.6 percent. Mining represented 3.4 percent, and farming just 2.9 percent.[xi]

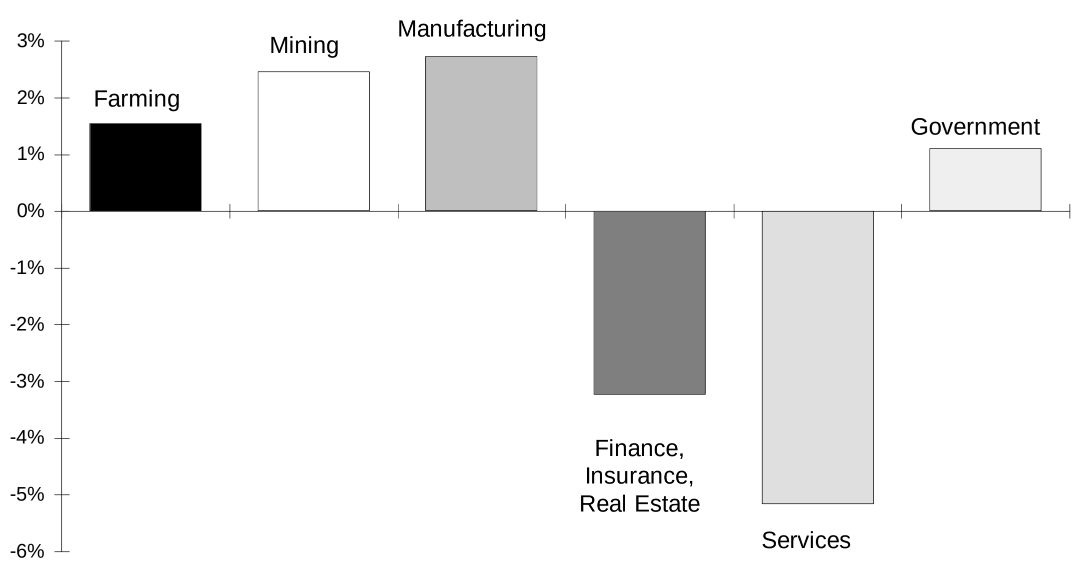
Strictly by earnings, then, Kentucky's is a services economy, since the services industry accounts for the largest share of the state's earnings. It is perhaps more accurately a services-and-manufacturing economy, since manufacturing is only fractionally smaller than services, and together they account for over two-fifths of total earnings. The top three industries –

services, manufacturing, and government — together comprise over 60 percent of the state's economy by earnings.

Relative to the nation, however, the picture changes. That comparison is depicted in the bar graph below, which shows those industries which differ notably between Kentucky and the country overall. The six industries shown differ by more than one percentage point — either higher or lower — in their shares of state and national earnings. The four industries not shown were nearly the same (within one percentage point) in Kentucky as nationally.

For each industry, the bar's length represents the percentage-point difference between its share of Kentucky's earnings and its share of U.S. earnings. Thus, bars above the line (positive values) represent those industries relatively larger in Kentucky than in the U.S.; bars below the line represent those relatively smaller in the state than nationally.

KENTUCKY VS. U.S.:
INDUSTRIAL MIX BY EARNINGS (1992)
(KY Industry Share Minus U.S. Industry Share)



Sources: Kentucky Cabinet for Economic Development, *1994 Kentucky Deskbook of Economic Statistics*; U.S. Department of Commerce, Bureau of the Census, *Survey of Current Business*, Nov. 1993.

Although farming comprises a small fraction of earnings in Kentucky, the state is indeed an agricultural one relative to the rest of the country, as seen in the bar graph. Just as Kentucky is about twice as rural as the nation overall (as noted above), its economy is twice as agricultural, as measured by earnings. Farming comprises nearly 3 percent of earnings in Kentucky, compared with around 1.5 percent nationally.

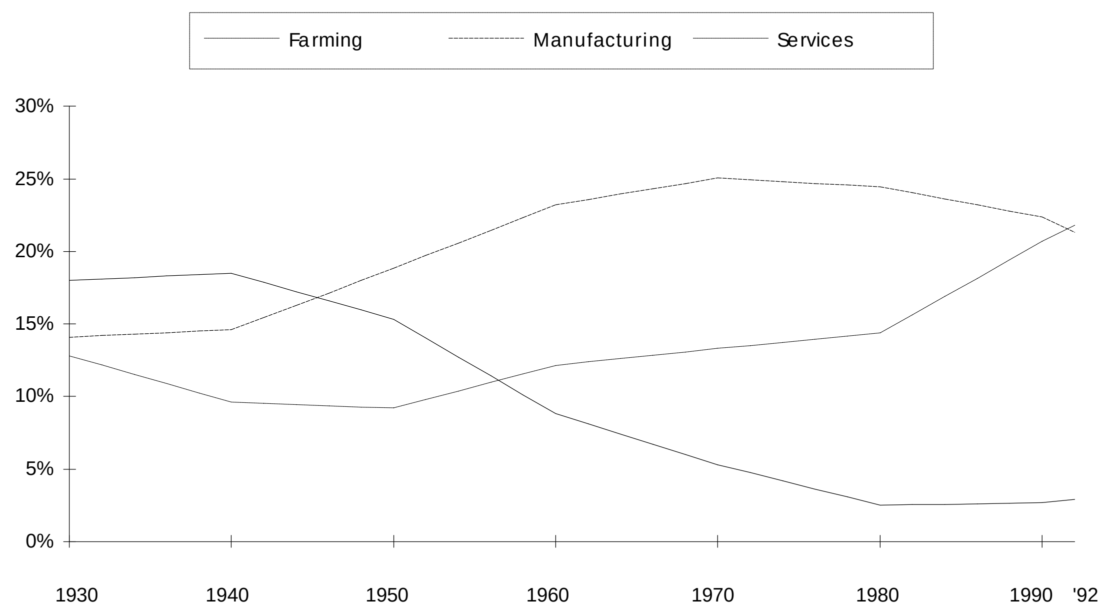
Manufacturing is also more prominent in Kentucky than in the U.S. Indeed, manufacturing, rather than farming, is the state's most overrepresented industry by earnings, accounting for 21.4 percent of earnings in Kentucky vs. 18.5 percent for the U.S. Mining is the second-most overrepresented industry by earnings, followed by farming, and then government.

The state's greatest departure from the country in industrial earnings comes not in *over*representation, but in the *under*representation of services. Although it's the state's largest source of earnings, services accounts for over 5 percentage points *less* of Kentucky's economy than of the country's (21.8 percent for Kentucky, 27 percent for the U.S.). The only other industry which is notably less prominent in Kentucky than nationally is that of Finance, Insurance, and Real Estate.[xii]

As measured by earnings, then, Kentucky has a services-and-manufacturing economy in absolute terms, since those two industries dominate the state's earnings almost equally. Compared with the nation, however, it is a manufacturing-and-mining economy, since both industries are significantly overrepresented in the state's earnings relative to the country's.

Although farming, manufacturing, and services together comprised less than half (46 percent) of Kentucky's earnings in 1992, their historical trends are instructive. The figure on the following page shows how the three industries have changed over the last 60 years, as measured by their shares of total earnings in the state. Farming was overtaken by manufacturing in the 1940's and by services in the 1950's; services then overtook manufacturing in 1992. As the graph makes clear, the relative decline of farming in Kentucky's economy, beginning in the early 1940's, was accompanied at first by the rise in manufacturing, and later by the rise in services as well.

FARMING, MANUFACTURING, AND SERVICES IN KENTUCKY: RELATIVE GROWTH AND DECLINE 1930 - 1992 (Percent of Total State Earnings)



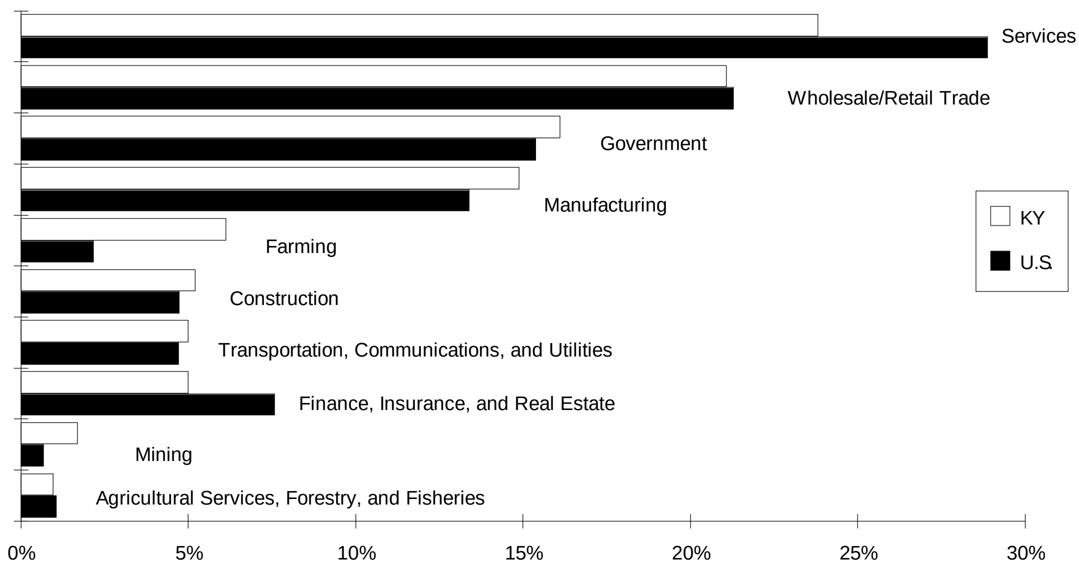
Source: Kentucky Cabinet for Economic Development, *1994 Kentucky Deskbook of Economic Statistics*.

Employment

Measuring the state's industrial makeup by employment yields somewhat different results. The bar graph which follows compares the Kentucky and U.S. economy by each industry's employment as a share of total employment. As can be seen, services is the largest industry by employment – as with earnings – for both Kentucky and the nation. The services industry is also relatively larger nationally than in the state (again, as measured by earnings as well).

An important difference between the employment and earnings measures – for both Kentucky and the U.S. – is that the second-largest industry *by employment* is wholesale and retail trade, rather than manufacturing, as measured *by earnings*.[xiii] For both the state and national economies, manufacturing ranks fourth by employment, after Services, Trade, and Government. Another notable distinction between earnings and employment is the relative importance of farming in Kentucky. As noted earlier, farming is relatively twice as large in Kentucky as in the nation overall, as measured *by earnings*. As measured *by employment*, however, farming is nearly three times more important in Kentucky – accounting for around 6 percent of the state's employment, compared with around 2 percent nationally. Farming is Kentucky's fifth-largest source of employment, compared with eighth-largest for the nation.

KENTUCKY VS. U.S.:
INDUSTRIAL MIX BY EMPLOYMENT (1992)
(Percent of Total State Employment)



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Regional Economic Information System*, June 1994.

Kentucky's five largest manufacturers by employment are (in order) General Electric Co., Fruit of the Loom Inc., Ford Motor Co., Toyota Motor Corporation, and Lexmark International Inc. Together they employed 37,390 in 1993. One-fourth of the state's manufacturing employment is concentrated in the Louisville area.[xiv]

Indicators

In addition to its industrial mix, an economy may be measured by size and performance. The size of a state's economy is often measured by total personal income. For 1993, Kentucky's total personal income was around $64.2 billion. Since states vary considerably in population, a more meaningful measure is average, or per capita, personal income – the income received, on average, by each person in the state. Total income simply measures an economy's size, while per capita income reflects its performance. For 1993, Kentucky's per capita personal income was $16,954. That compared with $20,781 for the nation, and ranked 43rd among the states.[xv] Over the course of the century, per capita income in Kentucky has generally risen as a percent of the nation's: from just over half in 1930, to 70 percent in the 1960's, to 80 percent in the 1970's, and — after dipping slightly in the late 1980's — to a high of 81.6 percent for both 1992 and 1993 (the latest available).[xvi]

In addition to per capita income, economic health is often measured by the rate of poverty. The poverty rate is the percent of the population whose income falls below the federal poverty line. In 1989 (the most recent year available), Kentucky's poverty rate was 19 percent, compared with 13.1 percent for the nation. The state's poverty rate that year was the sixth- highest in the country, and the fifth-highest in the South (after Mississippi, Louisiana, West Virginia, and Arkansas).[xvii]

The table on the following page summarizes much of the data presented in the discussion above.

PROFILE OF KENTUCKY
Geography, Population, and Economy

	Kentucky	U.S.	KY's Rank among States
Area (square miles)	40,411		37
Population (1990)	3,685,296	248,709,873	23
Population Growth			
Average annual growth for:			
• The century, to last Census (1900-1990)	0.6%	1.33%	
• The '80s (1980-1990)	0.07%	0.94%	
• The '90s, to latest available (1990-93)	0.87%	1.12%	
Population by Sex (1990)			
• Percent male	48.4%	48.7%	
• Percent female	51.6%	51.3%	
Population by Race and Hispanic Origin (1990)	92%	80.3%	
• Percent white	7.1%	12.1%	
• Percent black	0.6%	9%	
• Percent of Hispanic origin (any race)			
Rural Population (1990)			
Percent living in rural areas	24.8%	48.2%	8
Metro Population (1990)			
Percent living in metro areas	47.6%	79.4%	38
Per capita personal income (1993)	$16,954	$20,781	43
Poverty rate (1989)	19%	13.1%	6

(Data sources in footnotes to preceding text)

CHAPTER II

CONSTITUTIONAL BACKGROUND

It can be said that the constitutional history of Kentucky began with its creation as a county in the Commonwealth of Virginia in 1776. Status as a Virginia county never quite satisfied the Kentuckians, of course. For one thing, the distance to the Virginia capital, first Williamsburg and later Richmond, was great and travel was hazardous for anyone going there for business, legislation, or court appeals. Perhaps as importantly, the laws passed by the mother Commonwealth applicable to Kentucky were objectionable to many of the population. These objections ranged from apprehension over the validity of land grants and titles to disapproval of the regulation of the use of militia against the Indians. (Local militia units could be used defensively but not offensively against the Indians outside of Kentucky without the approval of the Governor of Virginia.) Yet another element of the controversy with Virginia was economic. The economic prosperity of Kentucky required access to the Spanish-controlled market in New Orleans; Virginia's economic interests lay elsewhere.

These differences would not have been so significant had the population of the Kentucky territory not grown so dramatically. In spite of long distances, and the aggravation of slow and hazardous travel, the population in Kentucky increased rapidly. Coincidental with the influx of more people into Kentucky was an increased frequency of Indian raids by both Southern and Northern tribes. This increased activity was probably one of the major factors which led to Colonel Benjamin Logan's calling the first of a series of so-called constitutional conventions.

Separation from Virginia

The first call for a constitutional convention called for delegates to meet in Danville on December 27, 1784. Altogether there were nine such conventions between 1784 and 1790. At these conventions a certain amount of basic work leading toward a constitution was accomplished. Among topics considered were such matters as the need for protection from Indian raids, requests for permission to separate from Virginia, and the desirability of joining the Confederation of the States created by the Articles of Confederation. Grievances with the Virginia authorities, the status of Kentucky's economy, and the inequities of the tax system of Virginia were discussed. There was even some discussion of and support for the scheme of the infamous James Wilkinson to separate Kentucky from both Virginia and the Confederation. Wilkinson's goal of having Kentucky become a ward of Spain was based on Spanish control of the mouth of the Mississippi, which at that time was the most feasible outlet for Kentucky's marketable products.

The First Constitution

The tenth constitutional convention convened in Danville in April, 1792. The session lasted only fourteen working days but the delegates drafted Kentucky's first Constitution and submitted it to the United States Congress. Congress accepted the Constitution and on June 1, 1792, Kentucky was admitted to the Union as the fifteenth state. That so much was accomplished in such a brief period at the tenth convention was because the previous nine conventions had worked out so many of the difficult problems being considered for inclusion in the Constitution.

The document which the convention drafted included a number of relatively new and progressive features.[1] Two such features were the provisions which called for conducting all elections by ballot rather than by the widely-used voice vote of the times and the basing of representation of both houses of the General Assembly on population rather than geography.

Although the institution of slavery was recognized by Kentucky's first Constitution, the General Assembly was given "no power to pass laws for the emancipation of slaves without the consent of their owners" or without compensation. Also, the General Assembly was authorized to phase out the institution of slavery through regulation of slaves brought into the state as merchandise and through laws enacted to protect slaves and "treat them with humanity" (Article IX).

In summary, it can be said that Kentucky's first Constitution provided a broad foundation for state government and authorized the General Assembly to enact detailed laws for its administration. Further, the need for future revision of the Constitution was recognized so provision was made for taking a vote of the people five years later to determine if a majority wanted another constitutional convention to be held.

Most political scientists agree that a state Constitution, when modeled after the United States Constitution, should provide a broad framework of government, one which is divided into three coordinate branches, and with authority granted to the legislative branch to make necessary changes through legislation to conform with changing needs and population growth. Further, a state Constitution should be difficult to amend. On the other hand if a state Constitution is lengthy and detailed, and actually writes legislation rather than merely providing the necessary authority for it, it should be relatively easy to amend.

The Constitution of 1799

After being approved by the voters of Kentucky, the second constitutional convention was held in 1799, in Frankfort. It took only twenty-seven days to draft the second Constitution of the Commonwealth. The debates revealed deep political and economic perceptions. There were several significant changes provided by the second Constitution. It provided for the direct election of Governors and Senators by the voters rather than by electors, as was required in presidential elections. It also added a Lieutenant Governor to the list of elected constitutional officers.

The original Constitution had provided for appointment of judges for life terms but could be impeached or removed by the Governor if two-thirds of the General Assembly felt it necessary to do so. Under the 1799 document, the Governor continued to appoint judges and, in addition, was granted the power to appoint local officials, many of whom had been elected previously. Sheriffs, surveyors, coroners, and justices of the peace were to be appointed by the Governor on recommendation of the county courts. Both of these provisions increased the power of the chief executive. Other changes made by the 1799 Constitution included increasing the number of state Representatives from forty to a minimum of fifty-eight but not more than one hundred, as the population grew, and the number of state Senators increased from a minimum of eleven to a minimum of twenty-four, with one new Senator being added in the future for every three new representatives. In addition to changing the method of electing the Governor, the 1799 Constitution also provided that a Governor might not succeed himself in office for seven years, and the Court of Appeals was deprived of its original jurisdiction in land cases, leaving it with mainly appellate jurisdiction over lower court rulings.

Neither of the first two Constitutions of Kentucky required that a referendum be submitted to the people for their ratification, nor was there any provision for amending these basic documents. In fact, under the second Constitution, the calling of a constitutional convention was made difficult by the omission of the clause of the first Constitution which had permitted the General Assembly to convene a constitutional convention by a two-thirds vote, notwithstanding an unfavorable popular vote. In another regressive step, voting by voice vote replaced the voting by ballot that had been one of the very progressive features of the first Constitution. The provisions regarding slavery were almost identical to those in the earlier document.

Dissatisfaction with the 1799 Constitution

In the three decades which followed adoption of the 1799 Constitution, many Kentucky voters became dissatisfied with several provisions in the document. One of the major concerns was over the appointment of so many officials by the Governor. There were allegations of nepotism and even charges that there were outright sales of appointive offices. Because of these charges and also partly due to the influence of the Jacksonian philosophy, many voters preferred to make all public offices, even judicial ones, elective.

Another public concern regarding the 1799 Constitution was over the state's floating debt and the lack of a sinking fund for its liquidation. The General Assembly was criticized for its lengthy sessions and there were demands for constitutional restraints on dueling, as well as criticism of the widespread illiteracy in the Commonwealth. Pro-slavery forces in the Commonwealth desired greater protection for slave property during this period. In other regions of the state, especially those increasing in population, there were demands for more equitable apportionment of legislative seats.

The Constitution of 1850

As early as 1828, demands for another constitutional convention were heard in the General Assembly. It was ten years later that the General Assembly passed an act for a statewide referendum to determine the will of the people regarding the calling of a convention. Although that effort failed, sentiment for change continued. This movement finally culminated in 1847 and 1848, with the proposed call for a convention being submitted to the voters and approved by more than a two-to-one majority.

The constitutional convention convened in Frankfort on October 1, 1849 and remained in session until December 21, 1849. The constitutional debates were quite extensive. The written proceedings of this convention, covering eleven hundred and twenty-nine pages of small type, resulted in a number of significant changes in the fundamental law of the Commonwealth.

The 1850 Constitution was drafted in the midst of the conflicts over slavery. Pro-slavery factions dominated the convention proceedings and were successful in incorporating a significant number of changes into the state's fundamental law. In the Bill of Rights to the 1850 Constitution, slave property was given added protection by a provision that slaves and their increase should remain in the state, and that ministers of religion, long under suspicion as anti-slavery agitators, could not hold the office of Governor or seats in the General Assembly.

The authors of the third Constitution were not only pro-slavery, they were also resentful of the broad power granted to the General Assembly by previous Constitutions. Therefore, the General Assembly was limited to biennial, instead of annual, sessions and its authority to enact special legislation was severely curtailed. Sessions were limited to sixty days, although they might be extended by a two-thirds vote. A limitation of $500,000 was placed on the state's indebtedness. (It should be borne in mind that in 1850 this amount was approximately one year's revenue receipts. This same limitation remains in the current Constitution, although General Fund revenue receipts for the fiscal year 1994-95 are expected to be just short of five billion dollars.) Membership in the General Assembly was fixed at one hundred in the House and thirty-eight in the Senate, where it remains in the present Constitution.

Responsibility for public education was constitutionally recognized for the first time by the 1850 Constitution. It provided a fixed educational fund to be supported by taxation and for a popularly-elected Superintendent of Public Instruction. In keeping with the prevailing Jacksonian philosophy regarding public office, all state and local officials, including judges, were made elective. The document also contained a lengthy article detailing the requirements and manner of election of Commonwealth and county attorneys, circuit and county clerks, sheriffs, coroners, jailers, assessors, surveyors, and constables. The dueling prohibition, still effective in Kentucky, appeared for the first time in the third Constitution. Its appearance was probably due to the fact that the denunciation of the practice by the press and from the pulpit had not been effective in preventing men of distinction from being involved in such affairs of honor.

Post Civil War Attempts at a New Constitution

The Civil War, and especially the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, rendered the Kentucky Constitution of 1850 with its provisions protecting slave property and discriminating against free Negroes obsolete. In addition, there were many other prevailing reasons for constitutional revision. Governor Stephenson, in

December 1867, recommended that the legislature submit the convention question to a vote of the people. The 1850 Constitution had provided that the only way a constitutional convention could be held was through a proposal by the General Assembly approved by a majority of the voters voting in the last general election for two successive elections. The call for a convention was defeated on December 18, 1873, and again every two years through 1885, perhaps establishing a pattern for Kentucky voters of reluctance to change their Constitution in its entirety. Finally the General Assembly, under the authority of the Constitution to "provide for ascertaining the number of citizens entitled to vote," called for a registration of all eligible voters to be conducted at the next election. Following this registration in the 1887 election, the convention received the required majority in 1888. It subsequently passed again in 1889 and in the following year delegates were elected to serve at the convention, convening on September 8, 1890.

The Constitutional Convention of 1890-1891

Although one delegate, Curtis F. Burnam of Richmond, recommended that the convention eliminate or repeal all provisions concerning slavery and any other obsolete sections, re-adopt the third Constitution, and go home, this was not to be.[2] This time the delegates deliberated for one hundred and ninety-seven legislative days, and, after spending many hours in long debates, drafted a Constitution of approximately 21,000 words, which was sixty percent longer than the 1850 Constitution.

To understand the action of the delegates in the 1890 convention, it is necessary to review the political-economic developments in Kentucky from the Civil War to 1890. While Kentucky did not secede from the Union, there were strong sympathies for the south, both during and long after the war. It can almost be said that following the firing on Fort Sumter, Kentucky seceded from both sides, by refusing to permit troops to be drafted in the state by the Union and yet declining to officially join the Confederacy.

The delegates to the 1890 convention were products of the era. Most of them were ultra-conservative and a majority were elderly. Many opposed the ratification of the war amendments and were bitter toward what they called radical Republicans and Negro suffrage. However, twenty years before the convention, the radical wing of the Republican Party had practically disintegrated and the Democrats ceased to fear radical control and the dangers of a large black vote. This led to the development of a "bourbon" and a "new south" factionalism, with opposing philosophies within the Democratic Party itself. Henry Watterson, editor of the Louisville *Courier-Journal*, urged Kentuckians to accept Negro suffrage and the war amendments, to cease determining fitness for public office on the basis of service in the Confederate army, and to support the industrial development of the state, particularly railroad development.[3] Although a proposal to subsidize railroads by a ten million dollar bond issue was defeated in the General Assembly by the conservative agrarian members, the more liberal representatives did manage to get through generous tax exemptions and special privileges for railroads and other large corporations. As a result, during this era, Kentucky expanded railway mileage and encouraged large investments of Eastern capital in timber, coal, distilleries, and tobacco warehouses.

Following the Civil War, tobacco had become the primary cash crop in Kentucky agriculture; pre-war farming had been more diversified. The panic of 1873 hit Kentucky hard – it was followed by six years of real economic depression with tobacco prices dropping, banks failing, many individual and business bankruptcies, and a drastic decline in land values. Kentucky farmers were opposed to the demonetization of silver and the Resumption Act, calling for the redemption of greenbacks in gold. Like their colleagues in other states, particularly in the midwest, Kentucky farmers wanted cheap money to increase farm prices. The general discontent led to the organization of more than eleven hundred local chapters of the Patrons of Husbandry, part of the Grange movement throughout the midwest. Although the Grange-oriented groups failed to enact most of their legislative program, they did succeed in creating a State Bureau of Agriculture, in building support for Kentucky's Agricultural and Mechanical College and in paving the way for the creation of a Railroad Commission, in order to limit the strength of large corporations to some extent.

A measure of prosperity returned after 1884 but this was of little actual benefit to Kentucky farmers. Since 1860 the average size of farms had decreased, tobacco prices were lower, credit and marketing conditions were uncertain, land tenure was unstable, and taxes were high. Thus, conditions were ripe for further agricultural protest. Many local groups affiliated with the Wheel, an agricultural lodge or society resulting from this agricultural unrest, which in turn, organized on a state basis and affiliated with the Farmer's Alliance in 1889. Reflecting the agrarian grievances, the Farmer's Alliance advocated as relief measures the free coinage of silver, a graduated income tax, anti-trust legislation, uniform taxes on all property, an end to the national bank note issue, elimination of all special privilege legislation, a tariff for revenue only, state regulation of railroad rates, elimination of the school book trust, increased appropriations for the State Agricultural and Mechanical College, greater authority for the Railroad Commission, regulation of tobacco warehouse charges, bank inspections, and elimination of all toll roads and bridges.[4]

At the time of the 1890 Constitutional Convention, Kentucky was still predominantly agricultural, with more than eighty percent of its nearly two million people living on farms or in small villages. Politically, two forces were struggling for control of public policy. The large corporations, particularly the railroad interests, sought every possible advantage and alliances were entered into to control prices. Privileges, particularly tax concessions, were sometimes gained by the purchase of votes of members of the General Assembly or their political henchmen. Utility franchises were the subject of political abuse and the railroads freely handed out passes and other political favors in return for support. As a result, railroad and other utility property frequently escaped taxation on the basis that their property was devoted to the public interest. So the railroads were highly profitable at a time when the farmers and small business interests in all the states were victims of depression. Many cities and towns were prevailed upon to go into debt to finance railroads, industries, and other business ventures which subsequently created deplorable financial conditions for them. The voters generally believed that big business was taking over control of their government. This sentiment was not peculiar to Kentucky and was, in fact, responsible for pressuring Congress to enact the Interstate Commerce and the Sherman Anti-Trust Acts.

Thus, we see that when the one hundred delegates to the Constitutional Convention were assembled on a hot day in early September in 1890 in the Old Capitol Building in Frankfort, they were absorbed with the power that big corporation lobbies had exercised in shaping policy through the General Assembly.[5] Most of the delegates believed that the most important responsibility before them was to limit the nearly unrestrained power of the legislative branch and impose checks upon it that would benefit the citizenship. The delegates were also determined to put shackles on the influence of railroads and other large corporations.

What kind of men were the delegates to this convention?[6] Sixty of the one hundred delegates were lawyers, twenty were farmers, thirteen were physicians, and seven were businessmen. The vast majority were of middle-age or older. Many of them were politicians whose partisanship was reflected in the new Constitution. All of them wanted to speak, which helps to account for the excessive length of the convention and its 6,480 pages of proceedings. Debate on the Bill of Rights alone consumed more than a month, even though the final draft resulted in very few changes. Upon the conclusion of the long convention, a lengthy document of 272 sections under twenty-two separate headings had been produced. The document contained an enormous amount of detail, including specific legislation, much of which could well have been left to future legislative enactment.

The Constitution of 1891

The present Constitution, then, was twice as long as its predecessor, and four times the length of the first Constitution of Kentucky. It has been pointed out before that constitutions should be brief, broad, general documents confined to fundamentals, that leave much of the specific details to the legislative branch of the government. However, the agrarian delegates in 1891, because of their mistrust of the General Assembly, did not want to leave much room for inference.

For the first time in Kentucky, the Constitution required a referendum by the people for adoption. Although there was some opposition to the new revision from both the citizens and the press, such opposition was mainly confined to certain parts and not to the whole. In fact, there was more criticism of the extended time spent in its drafting than of the document itself. The popular vote on August 3, 1891 was overwhelmingly for ratification: 219,914 to 74,523. Following the election vote and ratification, the convention reconvened to make changes, polish the wording, and remove ambiguities. This work was completed by September 28; however, it only resulted in reducing the number of sections from 272 to 263.

The only substantive changes made during these weeks of final revision were that certain elected public officials (the Superintendent of Public Instruction, the Auditor, and the Clerk of the Court of Appeals) might not succeed themselves, the Railroad Commission was made elective rather than appointive, and a section was added requiring the General Assembly to provide for local option elections regarding the sale of alcoholic beverages. These changes were never submitted to the voters, but when this omission was tested in the Court of Appeals (the Court of Last Resort at that time), it held that the convention had not exceeded its authority and that to invalidate its action would "bring confusion and anarchy upon the state." This validity was established in the case of *Miller v. Johnson* (1892) and was but the beginning of a long series of court interpretations of the 1891 Constitution.

Most of the various restrictions in the present Constitution can be explained by studying the times and the sentiment of the people during the period in which they were written. One good example is the restriction of sheriffs and state officials to a single four-year term, without power to succeed themselves. This provision probably resulted from the graft of the State Treasurer, James W. Tate, known as "Honest Dick Tate," who left the state in 1888 during his ninth term of office with all the money from the State Treasury, $247,028.50. The limiting of annual salaries of public officials to $5,000 possibly resulted from the knowledge that officials in a few counties had pocketed as much as $30,000 in fees. Even more important, $5,000 in 1891 was considered an adequate and ample salary. The $500,000 ceiling on state indebtedness, without requiring a vote of the people, was not unreasonable at that time, because money was scarce and the state's credit had been damaged by "Honest Dick's" departure.[7]

Regardless of the reasons motivating the delegates, they seemed determined to protect the electorate from public officials who might yield to the temptation to waste the taxpayers' money in the future. They also wished to prevent individual officeholders in key positions from becoming powerful fixtures in the governmental process. The resulting constitutional restrictions made it difficult, however, for future Governors to attract competent and qualified people with salaries below those paid for comparable positions in other states, the federal government, or private industry. History also indicates that later attempts to remove or modify these restrictions usually failed. Some liberalization has been achieved, however, through judicial interpretation of certain constitutional language and sections. Needless to say, after more than one hundred years of intermittent litigation and changes in the interpretations of certain sections, some provisions of this document remain obscure to the citizens and require further adjudication.

To understand these developments, the student must analyze not only the provisions of the current Kentucky Constitution but also the practical application of that document through administrative regulations of the various executive agencies responsible for its enforcement.

FOOTNOTES

1. "First Constitution of Kentucky," *Kentucky Revised Statutes*, Volume 1, pp. 781-794.

2. George L. Willis, Sr., "Kentucky Constitutions and Constitutional Conventions," *Register of the Kentucky Historical Society*, January, 1931.

3. Thomas D. Clark, *The History of Kentucky*, (Lexington, Ky.: John Bradford Press, 1960), p. 412.

4. Clark, p. 419.

5. Hamilton Tapp and James C. Klotter, *Kentucky Decades of Discord, 1865-1900*, (Frankfort, Ky.: Kentucky Historical Society, 1977), pp. 259-264.

6. The data for this paragraph is drawn from Allen E. Ragan, unpublished manuscript, Eastern Kentucky University.

7. Allen M. Trout, "Your Kentucky Constitution," *The Louisville Courier-Journal*, July 10, 1966. Also see: Mary Helen Wilson, *A Perspective of Constitutional Revision in Kentucky*, Informational Bulletin No. 119, (Frankfort, Ky.: Legislative Research Commission, 1976).

CHAPTER III

THE CURRENT CONSTITUTION OF THE COMMONWEALTH

Today Kentucky is governed under the provisions of its fourth Constitution, commonly called the Constitution of 1891, although its effective date was not until January, 1892. To understand the framework of any state government, one must remember that each state functions under two constitutions. Not only is there a constitution of the particular state but the United States Constitution governs each state as well. It is a fundamental fact that the Commonwealth of Kentucky is limited to a degree in what it may do by virtue of being a member of the federal union.

The U. S. Constitution

Although the U. S. Constitution confers upon all states of the union all powers not reserved exclusively by the federal government, there is one important qualification: the states cannot exercise powers forbidden to them by that document. Most of these prohibitions on state activities can be found in Article I, Section 10 of the U. S. Constitution.

Three further provisions regarding the relationship of the states to one another and of the states to the federal government are to be found in Article IV. The first obligates a state to give "full faith and credit" to the public acts, records, and judicial proceedings of the other states. A second provision calls upon any state to grant the "privileges and immunities" of its citizens to citizens of other states. The third obligation calls for a state to deliver fugitives from justice to the state having jurisdiction of the crime.

Some other important restrictions on the states are also found in amendments to the U. S. Constitution, primarily the Fourteenth Amendment.

This provision, known as the "due process and equal protection clause," has been interpreted to make certain parts of the first eight amendments applicable to the states, including all of the First Amendment guarantees. The Fourteenth Amendment forbids any states from depriving persons of life, liberty or property without due process of law, and forbids them to deny any person within their jurisdictions the equal protection of the laws. The equal protection clause has been widely used in recent years to invalidate state laws requiring racial segregation or furthering racial discrimination.

A further restriction on the states is found in Article VI of the U. S. Constitution which provides that the U. S. Constitution and laws passed by Congress under authority of the document ". . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

State Constitutions as Fundamental Law

Although the U.S. Constitution is paramount, it has been said that "the state constitutions are the oldest things in the political history of America."[1] The citizens of each state, subject to the broad limitations of the U.S. Constitution, are free to create a draft of whatever kind of government they wish to have in their respective states. Within the Anglo-Saxon tradition a constitution is a basic or fundamental law. What this means is that a constitution is the law upon which ordinary legislation is based. A further aspect of this tradition is that this fundamental law emanates from the people. Further, a constitution provides the people with a framework of government and protects them from arbitrary action on the part of their government.

Structure of the Kentucky Constitution

Citizens within a state, subject to the constitutional limitations we have described, are free to create the type of democratic government they desire. However, it should be pointed out that all fifty state constitutions are quite similar in general outline. For example, not a single state has established a parliamentary system of government, such as they have in England. Neither has any state deprived judges of the power of judicial review, despite strong objections at times to specific decisions.

Kentucky's Constitution follows the usual pattern of state constitutions. It has five parts: (1) a preamble, (2) a bill of rights, (3) the body, (4) an amendment or revisory clause, and (5) a schedule, which establishes a time and manner by which the Constitution will go into effect.

Preamble

While all state constitutions except those of Vermont and West Virginia begin with preambles, these are not actually operative parts of the constitutions. For the most part, they are simply invocations, or they express gratitude to the Deity for the blessings of liberty, and designate the purpose of the document.

Bill of Rights

The Bill of Rights in the present Constitution of Kentucky contains twenty-six individual sections, most of which were carried over from the 1850 Constitution. Actually the Bill of Rights has had few changes since Kentucky became a state in 1792.

The Bill of Rights provides a guarantee for liberties and rights traditionally found in a bill of rights, including that of the U.S. Constitution. Rights included in the U.S. Constitution are such guarantees as freedom of speech, press, assembly, and religion; property rights, the right to bear arms, free emigration, free elections, trial by jury, freedom from search and seizure, grand jury indictment in felony cases, the right to bail and habeas corpus; and prohibition against ex post facto laws, impairment of contracts, quartering of troops in peace time, involuntary servitude, bills of attainder, and titles of nobility or hereditary distinctions.

In keeping with the lengthy and detailed nature of the Kentucky Constitution, the twenty-six sections of Kentucky's Bill of Rights covers several pages of ordinary type. In contrast, the Bill of Rights in the U.S. Constitution is contained in ten short amendments which can easily be written on one page.

Advocates for a new constitution in Kentucky have not been inclined to alter the Bill of Rights, although the Constitution Revision Assembly proposed in 1965 that three sections be added to provide: (1) that a person accused of committing a felony could waive the right to grand jury indictment and go to trial on the basis of information supplied by the prosecutor; (2) that a material witness could not be held in prison to insure his appearance in a case; and (3) that electronic or other mechanical interception of communications should be prohibited.[2] The language found in Section 4 of the Constitution is quite similar to that found in the writings of the British political philosopher, John Locke, and also in Thomas Jefferson's Declaration of Independence. It reads:

> All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such a manner as they deem proper.

Although some purists contend that a lengthy, detailed listing of the people's rights is superfluous in a state constitution, because of the nationalization of rights under rulings of the United States Supreme Court, it should be pointed out that protecting the average citizen's rights in state courts under a state Bill of Rights is a quicker and less expensive procedure than going through the federal courts.

Body of the Constitution

The body of the Constitution contains articles providing for the separation of powers, a bicameral legislature, an executive department, an independent judiciary with power of judicial review, and the form and powers of local units of government. As of 1994, the body of the Constitution of Kentucky contains 214 sections.

The current Constitution, like the three previous ones, contains the traditional American provision for separation of powers. That is, the government is divided into the Legislative, Executive, and Judicial Branches. Powers are allocated to each that are considered ordinarily belonging to it, although strict separation is not always possible.

Indeed, in the federal government and in most states as well, the concept of strict separation of powers between branches is somewhat fictitious. For example, other provisions of Kentucky's Constitution permit the Governor to participate in the legislative process. The courts by custom, through judicial review, participate in policymaking by interpreting the law as well as the Constitution. Even state administrative agencies are usually permitted to make rules and regulations that have the force of law. The result of these types of provisions is often referred to as the principle of checks and balances. Its superimposition upon the pattern of separation of powers enables each branch of government to check upon the other branches in one way or another.

The Legislative Branch

As mentioned in Chapter 2, the general public, as well as the delegates to the constitutional convention of 1890-1891, apparently desired to curb the authority of the General Assembly. It should be pointed out, however, that the 1891 Constitution made no changes in the structure, organization, rules of procedure, privileges, immunities, or terms of members of the General Assembly. On the other hand, its biennial session was limited specifically to sixty days. No authority was provided the General Assembly, such as it had under the 1850 Constitution, to extend the legislative session by a two-thirds vote of the members, a privilege which had been frequently exercised under the latter document. The small number of matters forbidden as subjects of special legislation, as provided by the 1850 Constitution, was increased to twenty-eight. In addition to this requirement, the 1891 Constitution provided that no special law should be passed when a general law could be made applicable. Support for the concept that the General Assembly had abused the use of special legislation can be illustrated by the acts passed during the last session of the General Assembly under the 1850 Constitution. In that session, of the 1,926 acts passed, only 117 affected more than one county. A further limit on special legislation was incorporated into the 1891 Constitution by classifying cities. The Constitution divides cities into six classes according to population and requires that any act applicable to cities has to apply to all cities in at least one of the six classes.

Twenty-nine provisions (Sections 190-218) of the present Constitution are particularly significant, as they were intended to restrict and restrain certain activities of railroads and other large business corporations. These provisions also imposed limitations on the General Assembly in granting such corporations special privileges deemed detrimental to the public interest. These restrictive sections are too long and involved to summarize here, but a few may be given to illustrate their character. One example often cited is the ban on free passes or even reduced fees on railroads for any public official. A second example is prohibiting corporations from owning property not related to their business. Other examples include the establishment of an elected Railroad Commission which possesses regulatory powers; specific prohibitions against railroads; and authorizing the General Assembly to enact specific regulatory legislation regarding trusts, elevators, and warehouses.

The Executive

The framers of the fourth Constitution made few changes in the Executive Branch of government, although two additional constitutional, elected officials were provided, namely the Secretary of State and the Commissioner of Agriculture, Labor and Statistics. Even with these changes, the operation of state government in 1892 was relatively simple by today's standards. The necessary functions of government were performed by those agencies designated in the Constitution. In the years since 1891 the complexity and magnitude of governmental activities has increased dramatically. It is probably very fortunate that the delegates in 1891 included in the Constitution, in a very off-handed way, a clause stating that "Inferior state officers, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law,. . . for a term not exceeding four years, and until their successors are appointed or elected and qualified" (Section 93). Today, it is these "inferior state officers" who administer the major administrative activities and functions of the state in the areas of highways, finance, revenue, parks, conservation, health and many others.

In adopting a 1992 amendment, the voters made several sweeping changes to constitutional provisions regarding the Executive Branch. Statewide elected state officers elected in 1995 and thereafter became eligible to serve two consecutive terms instead of the single four-year term to which they had been limited. The Governor and Lieutenant Governor were required to seek party nomination and election as a team rather than individually. Guidelines were established for determining whether the Governor was disabled and unable to perform the duties of the office. The provision that stripped the Governor of the powers of the office when out of state was deleted. The Lieutenant Governor was required to perform such duties as prescribed by the General Assembly and assigned by the Governor and would no longer preside over the Senate during legislative sessions. Finally, after three previous unsuccessful attempts, the elected office of Superintendent of Public Instruction was abolished. Instead, the General Assembly provided by law for a Commissioner of Education to be appointed by the State Board of Elementary and Secondary Education.

The Judicial Branch

The structure of the Judicial Branch was changed in many respects by the 1890-91 convention. The provisions for the judiciary were spelled out in great detail. Perhaps even more significantly, restrictive wording prevented any future General Assembly from tampering with the judicial structure. Section 135 provided that "No courts, save those provided for in the constitution, shall be established." Section 110 created a Court of Appeals, having only appellate jurisdiction, but coextensive with the state and having the power "to issue such writs as may be necessary to give it a general control of inferior jurisdictions." Previously there had been an intermediate appellate court, called the Superior Court, to which most appellate cases went; it was popularly known as the poor man's court. As a result of this structuring, the highest court in Kentucky was overburdened with appeals.

The convention spent a great deal of time discussing local courts and their jurisdiction. Prior to 1891 dozens of special courts to serve local communities had been created. These courts had been granted powers and jurisdiction which were overlapping and confusing. This situation was doubtless responsible for the decision by the framers of the 1891 Constitution to deny future legislatures authority to create courts. Experience since 1892 has sufficiently shown, however, that the somewhat overlapping authority of minor courts provided for in the Constitution was not a satisfactory solution of earlier difficulties.

In contrast to the Kentucky Constitution, which permits only constitutional courts, it should be pointed out that the U.S. Constitution, in Article III, Section 1, provides that "the judicial Power of the United States shall be vested in one supreme Court and such inferior Courts as Congress may from time to time ordain and establish." Kentucky voters did much to correct this awkward situation by approving in 1975 a constitutional amendment adopting a new judicial article. This will be discussed in greater detail in Chapter VIII.

Education

Many centuries ago both Plato and Aristotle considered that education was a vital obligation of the government. In this country, Thomas Jefferson believed strongly that an educated citizenship was absolutely essential to democracy. Regardless of the views of these distinguished advocates, it is only during the past century that the idea that the government should provide tax-supported schools has gained general acceptance. Opponents of "free" education argued that such a practice would lead to social unrest, even undermine the family, require an extensive bureaucracy to administer, and give government control over the minds of the young. Others questioned the fairness of taxing people who could afford to educate their own children in order to educate others. Although there was some opposition, the Kentucky delegates in the Constitutional Convention of 1891 adopted Section 183, which provided that "the General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state."

Section 183 is a broad constitutional mandate, which gives the General Assembly wide authority in dealing with the common public schools.[3] To give backing to the authority, the General Assembly was made responsible for distributing a school fund to local districts in the manner in which the legislature deemed desirable.

The 1891 Constitution provided that separation of white and black schools was to be maintained but there was to be no discrimination between them in school fund distribution. No tax money was to be used for any church, sectarian, or denominational school.

There was a much more heated discussion in the convention over the question of higher education. Proponents of private colleges and academies completely opposed public support for other than the common schools (elementary schools). These proponents won a partial victory, and Section 184 reads in part: "No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to legal voters, and the majority of the votes cast at said election shall be in favor of such taxation." The same section went on to state that, "The tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law." Fortunately for all

Kentuckians, these rather severe constitutional restrictions have not prevented the development of the program of higher education in the Commonwealth.

Through judicial interpretation, needed changes have been construed as constitutional and the severity of the restrictions ameliorated. Judicial interpretations did later permit a new statutory appropriation for the support of the Agricultural and Mechanical College and even concurred in renaming this college a state university.[4] In 1906, two state normal schools were created, to which teacher education programs were transferred. In 1922, two others were created, and subsequently all four were authorized four-year teachers' college status. Still later, the four became state universities. This clause was also interpreted by the courts to enable the legislature to make appropriations to higher education without submitting the matter to a vote of the people.

In June 1989, the Kentucky Supreme Court affirmed the Franklin Circuit Court's ruling in *Council for Better Education v. Wilkinson* (1988), which held that the system of financing education in use at that time was unconstitutional, in that insufficient funds were provided to permit the poorer school districts to have an efficient system of public schools. The high court ruled that the statutory system as a whole and the interrelationship of its parts were in violation of Section 183 of the Constitution and stressed that the General Assembly has the sole responsibility and absolute duty to re-create and re-establish a new system of schools. A Task Force on Education Reform, twenty-two legislators and representatives of the Governor's office, developed recommendations for a new system and presented them toward the end of the 1990 session of the General Assembly. The General Assembly adopted the recommendations as the Kentucky Education Reform Act of 1990.

The most controversial institutional provision relating to education regards the selection of the Superintendent of Public Instruction. As noted before, until 1992 the people had defeated every attempt to tamper with this office. This recent change of opinion most likely stems from statutory amendments made by the Kentucky Education Reform Act of 1990. That legislation removed all the duties of the Superintendent of Public Instruction and provided for the State Board of Elementary and Secondary Education to employ a Commissioner of Education. The Commissioner serves as the executive officer of the board, implementing its educational policies and directing all persons employed in the Department of Education.

Local Government

If the length of the discussions and long sessions spent on local government are any criteria, the framers of the 1891 Constitution considered local government of great importance. The numerous and often detailed provisions dealing with cities and counties reveal the intent of the framers to leave as little as possible to future determination by either the General Assembly or any local legislative body. It can be said that these provisions put local government in a straight jacket from which it has never escaped.

As already indicated, cities were divided into six classes, according to population, largely to prevent special legislation. Section 156 of the Constitution provides that "the organization and powers of each class shall be defined and provided for by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions." It further provides that the legislature "by general law, shall provide how towns may be organized, and enact laws for the government of such towns until the same are assigned to one or the other of the classes."

Authority for local governments to incur indebtedness was also strictly limited. Local units were forbidden to grant utility licenses for more than twenty years, and then only to the highest and best bidder. Local officials were limited to holding one office. It should be remembered that both counties and cities, unlike political units in the federal system, are creatures of the state and can be created or abolished by the General Assembly, although the state Constitution imposed some limits on its authority to do so. County officials were enumerated in the Constitution, thus making future reorganization and improvement of county government very difficult. Somewhat similar provisions dealing with city officials have frequently thwarted the modernization of municipal government.

In 1984, after three previous unsuccessful attempts, the voters approved an amendment to Section 99 of the Constitution that deleted the prohibition against county sheriffs immediately succeeding themselves in office. In 1986, under an amendment to Section 160, mayors of cities of the first and second class were permitted to serve three consecutive terms.

Taxes

The delegates to the 1891 convention were also troubled over the issue of taxation. Under the old Constitution, some corporations had escaped taxation by contending that their property was devoted to a public purpose. The framers of the 1891 Constitution remedied this loss of needed revenue by requiring that all property, individual or corporate, should be taxed at a uniform rate. Some of the delegates to the convention were even opposed to exempting the property of such non-profit organizations as church and private schools. That issue ended in a compromise by providing certain limited exemptions. However, an amendment adopted in 1990 exempted from taxation all real property owned and occupied by, and all personal property, both tangible and intangible, owned by institutions of religion.

Additional financial restrictions imposed by the 1891 Constitution include the requirement that taxation must be for a public purpose, that taxes be uniform for all property in the same class, that all taxation be by general law, that all property be assessed at a fair cash value, and that the power to tax should not be surrendered by any grant or contract to which the Commonwealth should be a party. Referring to this limitation, it may be of interest to point out that the state, in Section 176, was forbidden to pledge or loan its credit to any individual, corporation, or political subdivision, or become a stockholder in or make any donation to any corporation, or to construct any railways or other highways. However, within sixteen years of the time the Constitution went into effect, this provision was changed by a vote of the people to provide that the credit of the Commonwealth could be pledged or loaned to counties for public road purposes.[5] A very significant provision, in view of the state's continuing need for increased revenue, was included in Section 174, which states that: "Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises."

Voting and Elections

Only a few changes were made in voting and election procedures in the 1891 Constitution. The voice voting required by the Constitution of 1850 was discarded and the Australian secret ballot was required, except for disabled voters.[6] Nor was there any attempt to circumvent the intent of the Fifteenth Amendment of the U.S. Constitution. By contrast, a number of Southern states had instituted poll taxes or difficult residence or registration requirements in their Constitutions, to prevent some people from voting. The General Assembly was required to make voter registration mandatory in cities of 5,000 or more.

Its power to require registration elsewhere was discretionary. Many years later, through ordinary statute, primary nominations came to be required.

The 1891 Constitution created a process by which there would be an election each year, but no local officials except city councilmen were to be elected when federal officials were on the ballot. This provision was incorporated into the Constitution largely because of events in Washington. In 1890-91, a bill was before the Congress of the United States which was primarily aimed at Southern states denying Negro suffrage. If that bill had passed it would have given the national government control of elections in which federal officials were chosen.

In 1992, the voters approved an amendment to the provisions of the 1891 Constitution to reduce the frequency of elections held in Kentucky. That amendment shifted all elections that were being held in odd-numbered years to even-numbered years, except for elections for statewide-elected state officers which will continue to be held in odd-numbered years. Under this change, there will be no elections held in 1997, and every fourth year thereafter will also be election-free.

The Amending Process

Kentucky's first three Constitutions contained no provisions for amendments. This subject received extensive discussion in the convention and was resolved in favor of having an amending procedure. However, the amendment process was made very difficult. It requires that a proposed amendment must first receive a three-fifths majority vote of the total membership of each house of the General Assembly at a regular session. This must be followed by a majority popular vote "at the next general election for members of the House of Representatives" (Section 256), before the amendment can be adopted. The requirement that not more than two amendments, each devoted to a single subject, could be submitted in any election makes the amending process even more restrictive. In the general election of 1979, Kentucky voters approved a constitutional change liberalizing this amendment process to increase to four the number of amendments allowed on the ballot every two years. This step, coupled with the doctrine of *Hatcher v. Meredith* [295 Ky. 194, 173 S.W. 2d 665 (1943). Also *Funk v. Fielder,* 243 S.W. 2d 474 (1951)], which allows the submission of very broadly based amendments, such as the 1976 amendment which completely restructured the judiciary, seems to be the most likely way that major changes in the present Kentucky Constitution will occur. Appendix A contains a listing of amendments which have changed the 1891 Constitution, as well as amendments that have been proposed but not adopted.

Other Constitutional Provisions

It should be pointed out that the foregoing discussion has largely been a summary of the Constitution. The thirty-three sections called "General Provisions" and the schedule regarding the time and manner in which the Constitution would be put into operation have not been discussed. The former is largely a "hodge-podge" which suggests that the delegates may have been trying to make certain they had not forgotten something and that each delegate had been given an opportunity to include his favorite idea in a document already entirely too long. Of course, it is necessary that every constitution have a schedule indicating when and in what manner the new document shall become effective. Many of the provisions in this constitution or in any revised constitution require action by the legislative body to implement the basic document. It took eighteen months of continuous sessions of the Kentucky

General Assembly to bring the statutes into conformity with the new Constitution.

A New Constitution?

There have been several attempts in recent years to draft a new Constitution for the Commonwealth. As early as the Griffenhagen and Associates report of 1924, which studied the government of the state, a movement has been present in the state to rewrite the Constitution. The first defeat at the polls for a formal call for a convention came in 1931 (97,778 against to 28,204 for a convention). Again in 1947 a call for a convention was defeated (191,876 to 144,192). Prominent in the statewide discussion during that campaign was the Committee of One Thousand. Among other claims they made, this group contended that a convention might destroy the Bill of Rights and allow other dire consequences to befall the state.

One of the more important sidelights of the 1947 constitutional campaign was the holding in *Gaines v. O'Connell*, which validated the General Assembly's right to attach conditions limiting any convention's authority in revising the Constitution [305 Ky. 397, 204 S.W. 2d 425 (1947)]. This holding was later reaffirmed in *Chenault v. Carter*. The latter case also held that the calling of a convention at a special session of the General Assembly, if confirmed by the next regular session, is valid. It also held that a constitutional question could be on the ballot at the time of a presidential election [Ky., 332. S.W. 2d 623 (1960)].

In 1949 Governor Earle B. Clements created by Executive Order a Constitutional Review Commission (CRC). The CRC was given a permanent basis by the 1950 session of the General Assembly and continued until 1956, when the Commission was abolished and its duties transferred to the

Legislative Research Commission. Governor Clements had appointed seven attorneys and judges to the Commission. The 1950 Report of the CRC is generally recognized as being the most significant recommendation of the Commission. It presented a section by section analysis of the Constitution. In all, it recommended that a minimum of 68 of the 263 sections of the Constitution be deleted or changed. The recommendation of changes was met by significant opposition, as reflected in the newspaper reports of the time.

After the call for a limited constitutional convention, begun in December, 1959, by Governor Bert Combs failed (342,501 against and 324,777 for a convention), yet another attempt at updating the Constitution was made. This time it was through the 1964 creation of a Constitutional Revision Assembly. Having failed in all previous efforts to bring a major change in the Constitution, those most interested in constitutional change in Kentucky made a bold attempt to structure what they called a "modern" constitution for the state. The charge to the CRA was based on Section 4 of the Constitution, which provides in part that the people have the "inalienable and indefeasible right" to change their government as they see fit. The unusual nature of this approach to constitutional change was labeled "Kentucky Unorthodoxy" in an article by David A. Booth and John E. Reeves in *National Civic Review*, (June, 1966, pp. 310-316).

The CRA was created on the recommendation of Governor Edward T. Breathitt. It consisted of fifty members, one appointee from each of the state's thirty-eight Senatorial districts, five appointees from the state at large, and the seven living former Governors.

The CRA engaged in an extensive section by section review of the Constitution. A list of members of the CRA and a comparison of the 1891 Constitution and the proposed revisions is to be found in the LRC

Informational Bulletin No. 52, "A Comparison . . . The Present -- The Proposed Kentucky Constitution." Again, opposition to change was highly organized and the CRA document was defeated soundly, with 517,034 against it and only 143,133 for it.

Fortunately, as indicated earlier, the Court in *Hatcher v. Meredith* [295 Ky. 194, 173 S.W. 2d 665 (1943)] had applied a broad interpretation of the constitutional provision that a constitutional amendment must deal with only one subject. Under the doctrine of that case, two attempts at major changes in the structure of government have been presented to the voters of the Commonwealth. The first such attempts were unsuccessfully made in 1973.[7] At that election voters rejected two amendments (See Appendix A). The second attempt, proposing completely revamping the judiciary, met with a favorable vote in 1975.

FOOTNOTES

1. James Bryce, *The American Commonwealth*, (New York: McMillan Press, 1921), Volume I, p. 427.

2. James T. Fleming and John E. Reeves, *A Comparison ... The Present -- The Proposed Kentucky Constitutions*, Informational Bulletin No. 52, (Frankfort: Kentucky Legislative Research Commission, 1966), p. 6.

3 *Louisville v. Board of Education*, 302 Ky. 647, 195 S.W. 2d 291 (1946).

4. *James v. State University*, 131 Ky. 156, 114 S.W. 2d 767 (1908).

5. Section 157a of the Kentucky Constitution as proposed by 1908 Acts, Chapter 36, and ratified by the voters at the November, 1909 election.

6. *Major v. Barker*, 99 Ky. 305, 35 S.W. 543 (1896).

7. The General Assembly proposed the amendments in 1972 and they were submitted to the voters in November, 1973, in accordance with the provisions of Constitution Section 256 in effect at the time.

CHAPTER IV

POPULAR CONTROL OF GOVERNMENT

One of the striking ironies of the democratic process is its ultimate reliance on politics while at the very same time many citizens either decry the corruptness of politics and fail to participate or simply try to ignore the political process completely. Despite, or perhaps because of, these major inconsistencies, people who do participate in the political process generally do so because they feel they gain something from that participation. It may be a sense of civic accomplishment. It may be the satisfaction of supporting a cause. It may be a job.

Political Parties

The one unifying factor which makes the democratic process work is the existence of political parties. The reason is utilitarian. Despite the detractors from political parties and their function, an essential truth is that parties make government possible. If one is willing to acknowledge that there are matters that are public in nature (e.g., records, legal instruments) then some form of government is inevitable, if simply to keep records! There must first be some systematic method for selection of persons to fill the governmental posts to execute these functions. Secondly, before any governmental action can take place there must be some type of coalition for a decision-making process, for example, a *legislative majority*, to determine what specific policies will be followed.

Even with this critically-defined function of political parties, it is difficult to assign a definition to the term "political parties." They obviously do exist. There are rules and regulations defining what they can and cannot do and what it takes "officially" to be a political party. Further, there has been substantial evidence generated that people respond to candidates because of labels they bear. Despite these realities, parties remain amorphous, perhaps in part because we are talking about a multi-faceted phenomenon. At the least are involved what one political scientist has labeled the party-in-the-electorate, the party-in-government, and party organization.

Origin of Political Parties in Kentucky

The development of political parties in Kentucky followed a pattern much like those of all the early states and the federal government. Political parties as we know them today did not exist when Kentucky's first Constitution was written. That is not to say that there were not factions, issues, and all the necessary ingredients of viable political rivalries; these elements were present and were important. In fact, there are some who advocate that the foundations of modern political parties were laid in the controversies over land titles, Indian problems, and the nature of the relationship (or split) with Virginia. For example, Watlington, in *The Partisan Spirit*, develops the argument that the nuclei of the National Republican Party and the Federalist Party are to be observed in the struggle to determine the status of Kentucky in relation to the federal government and Virginia.[1] In fact, she contends that there were three parties. The third had its roots in the partisan Tories.

However, a more traditional view is that it took the regular functioning of the governmental process to precipitate the formation of modern political parties. This process had two separate elements. The first was legislative, the give and take of the legislative process of determining policies that had lasting effects on the state, as factional elements cemented into political parties in Kentucky. The second element was elections, particularly the 1824 presidential race, in which Kentucky nominated a favorite-son candidate, U. S. Congressman Henry Clay, and called upon other states to support its choice. After his failure in his own bid for the presidency, Clay's role as Speaker of the House became critical when the presence of four strong candidates threw the 1824 election into the U. S. House of Representatives. In Congress, Clay successfully backed John Quincy Adams, although the Kentucky legislature had instructed him to support the Tennessean, General Andrew Jackson. As a result of Clay's actions, the period between 1825 and the 1828 election saw the drawing of fast and strong lines between the Jacksonian Democrats and the Whig forces of Henry Clay. A product of the period was the first convention for the purpose of determining a party nominee. This convention was held by the Whig party in Frankfort on December 17, 1827.[2]

Even though it is easy to observe the relationship of party development to the national arena, Kentucky politics were at this time still defined in terms of domestic questions, such as the courts controversy and fiscal relief. These two prime issues persisted throughout the 1820's.[3]

Since these early beginnings Kentucky has maintained essentially a two-party system as far as state-wide elections are concerned.[4] This is not to say that elections have split anywhere near 50-50; rather, the Republican Party has mustered a significant minority of voters in every election that they did not win.[5]

Population and Politics

Critical to analysis of political parties in Kentucky is the changing distribution of population within the state. Sectionalism (also termed regionalism or localism) has always been a significant factor in Kentucky politics. It still is, but it has taken on new and as yet unexamined dimensions in the Commonwealth. Three factors not previously present in Kentucky are impinging upon each other and upon the political process itself. The first is that, according to the 1970 census, for the first time a majority (52.3%) of Kentucky's population is located in urban areas (as defined by the U. S. Bureau of the Census).[6] Perhaps more importantly, the population of the presently designated Standard Metropolitan Statistical Areas equalled 48.1 percent of the total population.[7] These trends have held true over the last twenty years, with 51.8 percent residing in urban areas[8] and 48.3 percent residing in the designated SMSAs.[9]

The second factor was the development of the turnpike and interstate highway network, making rapid travel between the diverse portions of the Commonwealth convenient for the first time in the state's history. Kentuckians from the Purchase area or the Ashland area can reach Louisville, Frankfort, and Lexington with ease today. Thus we are seeing greater contact and interaction between regions.

The impact of these two factors becomes even more significant when they are coupled with the effect of the modern mass media on political style and campaigning. Perhaps the political elements most affected are the Republican Party as a whole and factional elements of the Democratic Party which might seek success at the polls through a media campaign aimed at large centers of population. These factors have the most direct effect in the major statewide campaigns.

Voting and Elections

Political parties are not mentioned in the Kentucky Constitution, nor in the federal Constitution. However, extensive rules and regulations pertaining to voter registration and election are provided by both the federal and state governments through statute law. These statutes, by regulating the primary process, do affect the operation and function of political parties. When Kentucky inaugurated its presidential preference primary, it added a new dimension, increasing the impact of state laws on all aspects of the party process at the local level.

Most constitutional processes pertaining to voting and elections are found in Sections 145 to 155 of the Kentucky Constitution. Most of the specific provisions concerning registration (including voter qualification) and the election process are left to the General Assembly. The Constitution establishes residency requirements and excludes certain classes of persons from voting. "Universal Suffrage" has never been "universal" in the Kentucky Constitution. Convicted felons, those in prison, persons declared mentally incompetent, and persons on active military service in Kentucky, unless otherwise a resident, are prohibited from voting in Kentucky.

The Constitution also requires that voters be citizens. Even though the U.S. Constitution provided for equal voting rights by women via the Nineteenth Amendment, the Kentucky Constitution retained the wording "every male citizen" until 1955. The present wording of "every citizen" was incorporated into the Constitution at that time, upon passage of its Seventeenth Amendment. That amendment also lowered the minimum voting age to eighteen, making Kentucky the second state to do so (Georgia was the first).

Kentucky law makes voter registration mandatory for "cities and towns having a population of 5,000 or more" (Section 147) and gives the General Assembly the discretion of providing, by general law, for registration of other voters. Section 147 of the Constitution further provides that all elections will be by secret ballot, that absentee voting is permitted, and that voting machines may be used. It also provides that "persons illiterate, blind or in any way disabled may have their ballots marked or voted as herein required." The General Assembly has enacted the necessary legislation to fulfill these requirements.

Although the General Assembly is given specific authority in prescribed sections, the writers of the 1891 Constitution saw fit to give it broad power, authorizing it to provide through statute the "framework" of the registration and election process. Section 153 is titled "Power of General Assembly as to elections" and provides that:

> Except as otherwise herein expressly provided, the General Assembly shall have power to provide by general law for the manner of voting, for ascertaining the result of elections and making due returns thereof, for issuing certificates or commissions to all persons entitled thereto, and for the trial of contested elections.

This means that the legal code necessary to implement the registration and election process is excessive. Most statutory law pertaining to elections is to be found in Chapters 116 through 121A of the *Kentucky Revised Statutes*.

The Constitution also stipulates minimum residency requirements, but these provisions were made inoperative in 1972 by the U. S. Congress for all federal elections.[10] Under the extensive revision of Kentucky election laws in 1972 and 1974, Chapter 116 of the *Kentucky Revised Statutes* incorporated the 30-day residency requirement for all elections in Kentucky.

In a mobile society the question of voting residency can be a complicated matter. The statutory provisions contained in KRS 116.035 are fairly precise regarding criteria for determining residency, but two major problems remain. One regards the status of college students. The Kentucky Constitution says that a voter's residence is considered to be the place where "habitation" is, and to which, when absent, "he has the intention of returning." The question is, "which is a college student's 'habitation,' a dormitory 'home' or the place of residence of a student's parents?" Until late in the 1970's, a college student was assumed to retain the legal residence of his parents or guardian unless he could prove an intention to maintain a permanent residence in the college town. Even prior to the present interpretation many jurisdictions in Kentucky allowed otherwise qualified college students to maintain their voting residence in the county where they were attending school.

The second aspect of the wording of KRS 116.035 which creates ambiguities is the "intention" (already mentioned in discussing college students). The word "intention" in all cases calls for the application of value judgments, which are always fallible as well as subject to abuse. Generally, however, these kinds of questions rarely if ever create major questions of voter fraud or discrimination, even though they may cause momentary inconveniences for a rather limited number of individuals in unusual circumstances.

Prior to the enactment of the election laws of 1972 the registration and recordkeeping process was almost exclusively a local process. It was with the passage of that law that Kentucky adopted a uniform automatic process for creating voter lists for each voting unit in each county. The registration process is still performed at the local level.

Any eligible person may register to vote or change his party affiliation in any of the following ways:

(a) In person;

(b) By mail;

(c) By means of the federal post card application, if the person is a resident of Kentucky and a member of the Armed Forces, or a dependent of members of the Armed Forces, or overseas citizen;

(d) By mail-in application form prescribed by the Federal Election Commission pursuant to the National Voter Registration Act of 1993 (commonly referred to as the "Motor-Voter" Act, which will be discussed later); or

(e) By such other methods of registration, or re-registration, as approved by the State Board of Elections, including the use of voluntary interested groups and political parties, under the proper supervision and directions of the county clerk, which may include door to door canvassing. [KRS 116.045(4).]

No one may register or change party affiliation during the twenty-eight days preceding any primary, special, or general election or during the seven days following such an election [KRS 116.045(2)], but a voter who has moved from one precinct to another within the same county may update his voter registration record at the polls on election day [KRS 116.085(2) and (3)]. Change of party affiliation between the general and primary elections disqualifies a person from voting for partisan candidates in the primary, although all registered voters may vote for such non-partisan candidates as judges in a primary (KRS 116.055).

As of September, 1994, there are over 2.1 million registered voters in Kentucky. Of this total, almost 1.4 million are registered Democrats, about

638,000 are registered Republicans, and approximately 86,000 are registered under other party labels or have no stated political party preference.

The voter registration forms are "prescribed and furnished" by the State Board of Elections (described below). The form is in duplicate. One copy is retained in the county clerk's office; the other copy is sent to the State Board of Elections office, where a statewide computerized record is maintained.

Registration is permanent in Kentucky. Once a person is registered, no re-registration is required, unless he moves to a different voting unit, changes his name, or changes party affiliation. Failure to vote in at least one federal election in four years, however, will cause the State Board of Elections to place a person's name on an inactive voters' list. A voter who no longer resides within the county in which he is registered may be purged from the voter rolls if he does not respond to notices from the State Board of Elections concerning his voting eligibility. Purgation can be challenged through an appeal to the county board of elections. A person whose name has been purged may re-register, providing he remains eligible. The first state purgation under the revised 1974 statutes took place during May of 1978 and now a biennial purge of ineligible voters is conducted.

In 1993, Congress enacted the National Voter Registration Act, which has been referred to as the "Motor-Voter" Act. That legislation expands voter registration opportunities beginning in 1995 by requiring the states to permit their residents to register to vote when they:

(1) apply for or renew a driver's license or nondriver's identification card;

(2) apply for or renew an application for various entitlement programs including Aid to Families with Dependent Children, Food Stamps, Medicaid, or

the Special Supplemental Food Program for Women, Infants, and Children, and any state-funded disability services; and

(3) visit an Armed Forces recruitment office.

The states may also designate other public and private agencies to serve as voter registration agencies. It is expected that some 250,000 residents per year will register to vote using these new registration methods. Residents may still register to vote at the county clerk's office as well.

State Board of Elections

The State Board of Elections is charged with the responsibility of overseeing the registration and election process of the state. It is comprised of the Secretary of State and six members appointed by the Governor. Technically four of the State Board's members, two from each party, are to be chosen from a list of five nominees "submitted by the state central executive committee of each of the two political parties that polled the largest vote in the last preceding election for state officials " (KRS 117.015).

In practice this has meant that Democrats and Republicans have been appointed. Although the American Independent Party made an appreciable showing in Presidential elections during the 1960's, it has never secured enough votes to gain representation on the State Board of Elections. The same is true of other independent parties, such as the one spearheaded by Ross Perot in 1994. Since the creation of the State Board, every Secretary of State has been a Democrat, thereby giving the Democratic Party a majority on the board.

There is a county board of elections in each of Kentucky's 120 counties. Each board is composed of the county clerk, the sheriff of the county, and two other board members appointed by the State Board from a list of five nominees presented by the county executive committee of each of the two political parties that polled the largest number of voters in the state at the last preceding election for presidential electors. The county clerk presides at all meetings. In case of a tie, the county clerk may cast an additional vote. Records of all the board's proceedings are kept and filed in the county clerk's office (KRS 117.035). In addition to their responsibilities as general overseer of the electoral process in the county (for example, the board stays in session all day election day and is responsible for securing adequate polling places for each precinct), the county board is charged with the selection of precinct election officers (a total of four persons for each precinct in the county) and alternates. These precinct officers serve in all elections held in the county during the year.

Additionally, the county board of elections is responsible for determining the precinct boundaries of the county. KRS 117.055 indicates that precincts should contain "as nearly as practicable, an equal number of registered voters." The suggested maximum number of voters is seven hundred and a county will not be reimbursed by the State Board for election expenses incurred for a precinct which contains less than 350 voters unless the county has received prior approval to establish such a precinct (KRS 117.055).

Elections

Most of the laws pertaining to elections in the Commonwealth are to be found in Chapters 116-121A of the statutes. Five types of elections are described: primaries, runoff primaries for party nominations for Governor and Lieutenant Governor if no candidate receives at least forty percent of the primary vote, regular elections, special elections, and presidential preference primaries. In addition, Chapter 118A describes the procedure for nonpartisan election of judges.

To be officially recognized as a "political party" in Kentucky the statutes provide that:

> (1) A 'political party' within the meaning of this chapter, is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and which cast at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for (KRS 118.015).

This apparent deterrent to the development of minor parties is offset by KRS 118.325, which provides that "political organizations" that received at least two percent of the vote at the last preceding election for presidential electors may nominate candidates for public office either by the convention process or by a party primary. Further, KRS 118.315 provides for nomination of candidates by petition, except for those of the two major parties who must be nominated through the primary process. This device may be used by any independent candidate or organization choosing to do so, the singular requisite being a required number of qualified signatures (5,000 registered voters for a statewide election). However, such a petition does not bring its sponsors official recognition as a "political organization" within the terms of Chapter 118.

In Kentucky the secret ballot on voting machines is guaranteed for each election precinct. Primary elections are set for the first Tuesday after the fourth Monday in May preceding the general election. The general election is set for the first Tuesday after the first Monday in November. If a runoff primary for nominations for Governor and Lieutenant Governor is necessary, it is held thirty-five days following the date of the primary.

The polling place is to be open continuously from 6:00 a.m. local time to 6:00 p.m. local time. A person who is waiting in line to vote at 6:00 p.m. shall be entitled to vote so long as his ballot is cast by 7:00 p.m. It is mandatory that no votes be cast later than 7:00 p.m.

Kentucky's Constitution and statutory law also provide that all employees are to be allowed not less than four hours off work to vote. The employer does have the right to say which hours an employee may be absent from work. Also, the request for time off to vote must have been made prior to election day.

Except for certain positions explicitly exempted, all political party candidates are to be nominated at the primary election. (The exceptions are some local elections – for sub-district school trustees, and board of education members – municipal elections, and presidential elections.)

The county clerk of each county is obliged to publish and post the names of all primary candidates in the order in which they are to appear on the voting machine. Each candidate is charged a filing fee by the appropriate office (county clerk for local offices, Secretary of State for state offices) for processing of the candidate's papers. Persons may run as write-in candidates, but must file a declaration of intent to be a write-in candidate to have votes cast for him counted.

Perhaps the single most significant aspect of primary election law is the provision for nominations by a plurality of votes. Simply put, this means that the candidate receiving the greatest number of votes in the primary is the party's nominee, except in party primaries to nominate candidates for Governor and Lieutenant Governor where a slate must win at least forty percent of the primary vote to avoid a runoff primary. There is no way to compare the specific results of this system with one which would require a majority vote or, failing that in the primary, would require a runoff primary for other offices. Nor is it possible to say that different results emanate from the different procedures.

Many observers feel that the "plurality" requirement favors candidates who have strong organizational support from entrenched factions. This is particularly true where there are several candidates. A runoff system forces the two slates of candidates for Governor and Lieutenant Governor having the largest votes to build coalitions from among supporters of the other candidates, in order to gain a majority of the votes in the runoff primary.

The Presidential Preference Primary

Kentucky's first experience with a presidential preference primary came in 1976, after the 1974 session of the General Assembly had provided for such a primary. Like the regular primary election, the presidential preference primary is a "closed" primary. That is, only persons registered as members of a political party may vote in that party's primary. Once again, the defining of "political party" creates some difficulty. In the presidential preference primary a political party is defined as a "political party that cast ten percent (10%) or more of the votes for Governor in the preceding election, or has a registration equal to ten percent (10%) or more of the total registered voters in the Commonwealth" (KRS 118.551). No provisions are made for any other "parties" to be involved in the presidential preference primary, even though KRS 118.591 provides for nomination of candidates by petition.

In 1988, Kentucky and twelve other Southern states conducted their presidential preference primaries together on the third Tuesday in March, rather than on the dates their primaries for other offices were conducted. This primary, which was referred to as "Super Tuesday" because of the large number of electoral votes at stake, was intended to draw presidential candidates to the Southern states so they would get some understanding of the region, though some political analysts felt that its purpose was to produce a

Southern candidate or give the south extra clout in the selection process. The Reverend Jesse Jackson and then-Tennessee Senator Albert Gore took most of the Democratic votes in the 1988 primary, with the eventual party nominee, Michael Dukakis, finishing third. In 1990, the Kentucky General Assembly voted to discontinue Kentucky's participation in "Super Tuesday" and returned the presidential preference primary to the regular May primary date, in part because Kentucky had the lowest voter turnout of all the participating states and the total expense of conducting a separate statewide election ($4.1 million) for that purpose was prohibitively high.[11]

In 1992, the General Assembly permitted the political parties to determine whether their delegate votes for presidential candidates at the party national conventions would be determined by a party caucus, a presidential preference primary, or a combination of the two. If the delegate votes are to be distributed on the basis of party caucuses only, no presidential primary will be held.

In most procedural respects, the presidential preference primary is governed and conducted in the same manner as other primary elections. One difference is the $1,000 deposit required for a candidate's name to be placed on the ballot. This deposit is not refunded unless no presidential preference primary for the candidate's party is held.

Names of candidates for the presidential preference primary may be placed on the ballot by either one of two ways. The State Board of Elections meets in Frankfort on the second Tuesday before the primary for the purpose of nominating candidates for the primary. It is charged with nominating "all those candidates of the political parties for the office of President of the United States who have qualified for matching federal campaign funds" (KRS 118.581). The second method, and a way of perhaps insuring that a candidate's name appears on the ballot, is by petition. A petition may be filed by either an individual or a group which has the consent of the candidate. The petition requires the signatures of 5,000 qualified voters who are affiliated with the candidate's political party and are registered voters in Kentucky.

Once a person has been properly nominated by petition or by the State Board, the Secretary of State notifies him that his name will appear as a candidate on the Kentucky presidential preference primary ballot of his party. If the nominee fails to pay the filing fee, such action is considered a disclaimer and a withdrawal from the primary. In addition to the candidates whose names have qualified to appear on the ballot, provision is made for a slate of "uncommitted" delegates.

Each candidate, as well as the "uncommitted" delegates, receives a prorated portion of the party's authorized delegate vote, provided that the candidate has received at least fifteen percent of the party's total votes cast in the presidential preference primary or party caucus. However, "uncommitted" delegates are not bound by the requirement that they vote "uncommitted" on the first ballot at the national convention as the delegates for named candidates are.

In 1992, a total of some 470,697 people voted in the Democratic and Republican presidential preference primaries. A total of 369,578 voted for a total of six individual candidates, including "uncommitted," in the Democratic Party. There were two candidates, including "uncommitted," and a total of 101,119 votes cast in the Republican primary.[12]

The fact that the delegates, except for "uncommitted" delegates, are bound only for the first ballot places some significance on who these delegates are and how they are chosen. Technically speaking, every person who is registered and who indicated a party preference is a member of that party.[13]

More practically, the operations and decision-making of the political parties are carried out through a system of standing committees organized in a hierarchical pattern functioning in conjunction with a series of conventions. The base of this pattern is the precinct – the smallest voting unit. However, since many precinct party components are generally not active, the significant components in the state party structure are the county and/or congressional district committee and convention. It is at this level and the state level that the importance of party organization emerges. These elements have significant roles to play in terms of executing statutory grants of authority and as nuclei for developing organizational strength for successfully conducting a political campaign. It is quite likely then that those persons who are actively and continuously involved in partisan politics will emerge as the decision-makers at the county and state level. The openness and competitiveness of the local units and the mathematical chances for any of a variety of coalitions to develop tend to make the struggle for control of a majority of the delegate/organizational votes at the state level a constant search for a new balance between old and new factions. Obviously in such an arena the incumbents have an advantage.

Prior to its removal in 1992, the constitutional limit preventing the Governor from being re-elected to an immediately succeeding term served to increase the probabilities of constant realignment of factions within both parties. It should be pointed out that it is not necessary that factional leadership be lodged in the hands of an elected public official. It is quite possible, particularly at the local level, for a leader of a political faction to emerge who is not generally visible to the public.

Unfortunately most people feel that voting is the only way they can participate in politics; all too often even this step is not taken. For example, only 15.7 percent of Kentucky's registered voters turned out in the 1994 primary; 41.7 percent turned out in the 1993 primary in which nominations for local offices were decided; and in 1992, a presidential election year, 26.5 percent voted in the primary while 73.2 percent voted in the general election.[14]

Registry of Election Finance

The Registry of Election Finance was statutorily created in 1966 as an independent state agency to administer the statutes pertaining to political campaign and election financing. With the reform of campaign finance and election laws in 1988 and 1992, the Registry's duties and enforcement authority have steadily increased. In 1992, the General Assembly enacted the Public Financing Campaign Act and transferred the agency from the Public Protection and Regulation Cabinet to the Department of State.

`The seven members of the Registry are appointed, subject to Senate confirmation, by the Governor, Auditor of Public Accounts, Attorney General, and Secretary of State in a bipartisan or nonpartisan manner for staggered four-year terms (KRS 121.110).

The duties of the Registry include developing forms for required campaign financial reports, publishing a manual for candidates, slates of candidates for Governor and Lieutenant Governor, and committees describing campaign finance law requirements, preparing and publishing various reports pertaining to receipts and expenditures in campaigns, reviewing financial reports filed by candidates, slates of candidates, and committees for legal compliance, registering committees with the Registry, conducting random audits of receipts and expenditures of local and district campaigns, auditing receipts and expenditures of campaigns for all statewide offices, initiating investigations of possible infractions of campaign finance laws, and referring knowing violations of election finance laws to the Attorney General or local prosecutor for civil or criminal prosecution while reserving the right to petition the court to enable the Registry's attorney to prosecute if the Attorney General or local prosecutor does not proceed with the prosecution in a timely manner (KRS 15.243, 119.305, 121.110, 121.120, 121.140, 121.170, and 121.180).

The Public Financing Act of 1992, codified as KRS Chapter 121A, provides that all policy and enforcement decisions concerning the regulation of campaign finance are the ultimate responsibility of the Registry. The Act created an election campaign fund in the State Treasury from which funds may be paid only upon warrants issued by the Registry. The Registry distributes transfers for the two-for-one matching of qualifying contributions to qualifying slates of candidates for Governor and Lieutenant Governor that have agreed to limit their spending to $1.8 million per election and reports to the General Assembly within three months following an election for Governor and Lieutenant Governor the total amount of fund transfers paid from the election campaign fund. In general, a slate of candidates for Governor and Lieutenant Governor that has agreed to abide by the spending limit qualifies for matching public funding when it raises from $300,000 to $600,000 in qualifying contributions of $500 or less per person, political action committee, executive committee of a political party, or contributing organization, so long as at least one other opposing slate has also reached the minimum qualifying threshold in contributions received. The Registry preserves all receipted bills and accounts for six years and conducts an audit of contributions to and campaign expenditures by any campaign committee of each slate of candidates (KRS Chapter 121A generally).

The Registry may appoint an executive director and other employees and may issue advisory opinions. The Registry must conduct a public hearing within three days after it receives a report that a slate of candidates has, or may have, received contributions or made expenditures in excess of the spending limit.

It is hoped that this cursory glance at the statutory requirements of political parties and elections has revealed that people who hold this view do not perceive the true nature of the political process. If a society is to be open and competitive, citizens must actively participate in the political party process, because of its dominance of the method of selecting who will be public officials at all levels of government within the Commonwealth.

FOOTNOTES

1. Patricia Watlington, *The Partisan Spirit: Kentucky Politics 1779-1792*, (Atheneum, New York: McClelland and Stewart, Ltd., 1972).

2. Thomas D. Clark, *A History of Kentucky*, (Lexington: John Bradford Press, 1960), pp. 146-154.

3. Steven A. Channing, *Kentucky: A History (The State and The Nation Series)*, (New York: W. W. Norton and Co., Inc., 1977), Chapter 3.

4. Jasper B. Shannon and Ruth McQuawn, *Presidential Politics in Kentucky 1824-1948*, (Lexington: University of Kentucky Bureau of Government Research, 1950). There is also a discussion in Malcolm E. Jewell and Everett W. Cunningham, *Kentucky Politics*, (Lexington: University Press of Kentucky, 1968), Chapter 1.

5. Robert Sexton, "Kentucky Politics and Society 1919-1932," Ph.D. thesis, University of Washington, 1970.

6. J. Allen Singleton, "Population and Politics," Geography Section, (Louisville: Kentucky Academy of Science, 1976).

7. *State and Metropolitan Area Data Book 1986*, U.S. Department of Commerce, Bureau of the Census, (Washington, D.C.: Government Printing Office, 1986), p. 507.

8. *Statistical Abstract of the United States 1994*, U.S. Department of Commerce, Bureau of the Census, (Washington, D.C.: Government Printing Office, 1994), p. 43.

9. *Statistical Abstract of the United States 1994*, U.S. Department of Commerce, Bureau of the Census, (Washington, D.C.: Government Printing Office, 1994), p. 38.

10. *Dunn v. Blumstein*, 92 S. Ct. 995 (1972).

11. Associated Press, "Conference Endorses 'Super Tuesday' in 1992," *Louisville Courier-Journal*, 26 March 1990.

12. A total of 1,492,900 persons voted in the 1992 presidential general election. There were 665,104 votes cast for the Democratic candidate, 617,178 votes cast for the Republican candidate, 203,944 for the Independent candidate, and 6,674 for other minor party candidates. All voting returns quoted are from the Official Primary and General Election Returns for 1992, Office of the Secretary of State, Frankfort, Kentucky.

13. There is no recent extensive study of political parties in Kentucky.

14. All voter turnout percentages are from official reports by the Kentucky State Board of Elections, Frankfort, Kentucky.

CHAPTER V

THE GENERAL ASSEMBLY

In every state and at the federal level as well, the legislative branch of government is one of three coordinate branches. In Kentucky this branch is officially designated the General Assembly. The Constitution of Kentucky states that "The Legislative powers shall be vested in a House of Representatives and a Senate, which, together, shall be styled the 'General Assembly of the Commonwealth of Kentucky'" (Section 29).

House members in Alabama, Louisiana, Maryland, and Mississippi and in the Commonwealth of Puerto Rico have terms of four years. In the remaining states that have a House of Representatives or Delegates, members are elected for only two-year terms. Nebraska and the territories of Guam and the Virgin Islands have a single body or unicameral legislature. In each instance it is designated as the Senate.[28]

Legislative Districts

The framers of the 1891 Kentucky Constitution provided that the legislative districts would be as nearly equal in population as possible without dividing any county, except where a county contained more than one district and without combining more than two counties to make a representative district. Less than two decades later Kentucky's highest court held that "more than two counties may be joined in one district, provided it be necessary in order to effectuate that equality of representation which the spirit of the whole section so imperatively demands."[29] Section 33 of the Constitution further requires that the General Assembly shall redistrict the state legislative districts every ten years. Prior to 1972, the only valid redistrictings under the 1891

Constitution took place in 1918, 1942, and 1963. As a result of this evasion of the constitutional mandate, a great many inequalities developed. For example, by 1960 one Fayette County district had approximately 100,000 residents, and one in Jefferson County had almost 200,000, while the district which constituted agricultural Todd County had only 11,364. The average population of the House districts was 30,381.

Senate districts varied just as greatly as did the House districts. One eastern Kentucky senatorial district had a population of 45,122, while a Kenton County district had 120,700. The average number of persons per senatorial district statewide was 79,951. Despite these inequities in the size of legislative districts, Kentucky in 1972 was still in the top quarter of the nation in terms of fair districting.

Legislative bodies of all kinds, including the Congress of the United States, have always been reluctant to redistrict their own territories because legislative incumbents fear difficulty in being re-elected from a re-shuffled group of unknown, and perhaps less friendly, constituents. Under the doctrine of the historic decision of the United States Supreme Court in *Baker v. Carr* (1962), which held that large differences in population size of legislative districts violated the "equal protection of the law clause" of the Fourteenth Amendment to the United States Constitution, a threat of possible federal intervention in the reapportionment process in the states emerged. In response, many states began taking steps toward redistricting their legislatures. An extraordinary session of the Kentucky General Assembly was convened to that end in January of 1963. That special session passed a redistricting act, which for a short period placed Kentucky high on the list of states reducing the inequalities of representation.[30] This redistricting act was not challenged in the court, although in many instances there was more than a 25 percent deviation from the average district population.

By 1970 the federal courts had become stricter in their interpretation of the "one man-one vote" doctrine. So, the Kentucky General Assembly again convened in extraordinary session, in February of 1971, for the purpose of reapportioning the legislative districts with a view of achieving greater equality. During the debates on the bill, it was pointed out that the 1965 Supreme Court of the United States, in upholding a Tennessee districting plan, stated that deviations up to 15 percent from an average could be permitted. It is interesting to note that the House bill passed in this session had deviations in average population figures (according to the 1970 census) from 12.7 percent below to 12.8 percent above the average district population, which was 32,193. The Senate bill (the two bills were combined for the final passage) had deviations ranging from 12 percent above the average (84,719) to 7 percent below.[31]

Shortly after its passage, this 1971 redistricting act was challenged in the United States District Court of Eastern Kentucky. District Judge Mac Swinford, on July 26, ruled that the act was invalid. He held that although "unavoidable divergencies" from strict mathematical equality might exist, "the deviations resulting from the current (Kentucky) law [could not] be justified."[32] The court decision also indicated that although deviations greater than 3 percent from the average would not be permitted, the election of legislators for the 1972 General Assembly from the districts established by the act would be permitted. Thus it was again necessary for the General Assembly to try to redistrict itself.

In June of 1972 Governor Wendell H. Ford called a special session of the General Assembly. Included in the call was a proposal for the redrawing of district lines for the legislature. During this special session the General Assembly proceeded to redistrict the state so that no districts deviated more than 3 percent from the average. Under this new act the House districts averaged 32,207, with a range from a minus 2.9 percent in part of Campbell County to a plus 2.86 percent in the fifty-second district, composed of part of Russell and all of Adair and Casey Counties. In the Senate, deviations ranged from a minus 2.82 percent in the twenty-sixth district, composed of part of Jefferson and all of nine nearby counties, to a plus 2.86 percent in the seventeenth district, composed of part of Whitley and all of Bell and Harlan Counties. It is apparent that this redistricting act gave little consideration to any factor other than population. Although Kentucky legislators had little discretion under the mandate of the court decision to make arbitrary district boundaries on the basis of numbers of voters, it should be kept in mind that other factors, such as local government boundary lines, the homogeneity of the population, roads, transportation facilities, natural barriers and various local considerations, are all factors which affect the question not only of who the legislator will be, but also how the representative will function.

Kentucky legislative districts have been redistricted twice since 1972, once in 1982 during the Regular Session of the General Assembly, and again in 1991 in an extraordinary legislative session.[33] The 1982 plan was implemented without incident, but the 1991 plan was challenged on the basis that it violated the prohibition, found in Section 33 of the state's Constitution, against dividing a county to form a legislative district, except where there may be more than one district in the county.

The plaintiff, a private citizen, acknowledged that Section 33 was found unconstitutional in Federal District Court, to the extent that it prevented achieving the degree of equality of population required by the Fourteenth

Amendment to the Constitution. The plaintiff argued, however, that the 1991/1992 plan divided 19 counties to form the 38 Senate districts, and divided 48 counties to form the 100 House districts, and that alternative plans, one of which was introduced in the legislature in 1992, divided as few as 2 counties to form the required Senate districts, and as few as 9 counties to form the House Districts. And the alternative plans would have increased only slightly the deviation from the ideal district population.

A finding by the trial court, upholding the constitutionality of the 1991 redistricting act, was reversed on appeal by the Kentucky Supreme Court. The Supreme Court postponed the effective date of its decision until after the 1994 legislative elections, but declared that after January 3, 1995, the act will be invalid. As of this writing, new redistricting plans are being drawn in anticipation of a special legislative session early in 1995, called for the purpose of adopting a plan that will pass constitutional muster.

Constitutional Restrictions

The Kentucky Constitution places a number of restrictions of a variety of types on the legislature. Among the most rigid, and perhaps the most important, limitations are those imposed on the length and frequency of legislative sessions. The Constitution of 1891 provided for biennial sessions of the General Assembly, with a maximum length of sixty days, exclusive of Sundays and holidays. A further restriction permitted only the Governor to call a special or extraordinary session and determine the subject matter that may be considered during such a session.

In 1979 the voters of the Commonwealth approved two amendments affecting legislative sessions, both of which had been proposed by the 1978 Session of the General Assembly. One added to the list of days excluded from the sixty legislative day limit, ". . . any day on which neither House meets. . . .," and provided that no regular session could last beyond April 15. The other required the General Assembly to meet in January in odd-numbered years for not more than ten legislative days for the ". . . purposes of electing legislative leaders, and adopting rules of procedure and the organizing of committees."

The effect of the former amendment was to give the legislature the equivalent of approximately three weeks during which it can temporarily adjourn for purposes of study, committee meetings, or, as has been the case in every regular session beginning in 1980, to create a ten day "veto period", after which the General Assembly reconvenes to consider bills vetoed by the Governor. The latter amendment, coupled with legislative elections in even-numbered years, also the result of a 1979 constitutional amendment, gives new and veteran legislators alike a full year to become acquainted with current issues before being required to cast votes in committee and on the chamber floor.

Still, the mandatory sixty-day biennial limit for a regular session, plus the large number of bills introduced, makes it very difficult for legislators to have time to study every bill. Because of the time limitation, more and more reliance has been placed upon legislative committees to screen legislation falling within their jurisdictions, and to refer to the floor only those bills worthy of consideration by the entire chamber.

Committees are able to get a head start on consideration of issues through an interim committee system, which convenes under the jurisdiction of the Legislative Research Commission. Actual bills, scheduled for introduction during the upcoming session, may be brought before the interim committee at the request of the sponsor through a process called "prefiling." Prefiled bills are reviewed by the interim committee of jurisdiction, and may be changed to conform to the wishes of the committee with the consent of the sponsor. This system of review and amendment by the interim committee virtually assures approval of the bill by the respective standing committees during the session.

Limited time also seriously restricts floor debate on bills. It undermines legislative oversight of the executive branch and it generally results in a backlog of legislation and a jam in the closing days of the session.

The framers of the Constitution of 1891 limited the powers of the legislators in many other ways. It has been frequently pointed out that the framers wrote much specific legislation into the basic document, thus limiting the substantive powers of the legislature to enact ordinary legislation on certain subjects. As previously noted, the Constitution also prohibits the General Assembly from passing local or special legislation. Because the Constitution specifies so many details of county and municipal government, the legislators are unable to authorize new or more flexible forms of governmental structure to address problems of modern metropolitan-urban areas. Other restrictions, such as maximum limits on tax rates and on the indebtedness of county and municipal governments, make it extremely difficult, if not impossible, for the legislature to adjust to changing needs and fluctuations in dollar values. Section 171 of the Constitution places a number of restrictions on taxes to be levied, the uniformity in classification of property, exemptions and referendum petitions on tax laws. The regulatory authority of the General Assembly is also limited by many detailed provisions governing the regulations of corporations doing business with the state. The state is further prohibited from providing financial aid to counties and cities– except for statewide purposes, which is generally interpreted to include only education, highways and health.

The state Constitution provides that there shall be one hundred representatives and thirty-eight senators in the General Assembly. Their terms run for a period of two years and four years respectively, with one-half of the senators being elected in the same biennium as the house members. This arrangement has traditionally provided greater continuity of membership in the Senate.

Prerequisites and Perquisites of Legislators

The Constitution (Sec. 32) establishes the qualifications of members of the General Assembly by requiring that a representative be twenty-four years of age at the time of his election, and have resided in Kentucky two years, the last year being "in the county, town, or city for which he may be chosen." A senator must, at the time of his election, be thirty years of age, a citizen of Kentucky, and have "resided in this state six years next preceding his election and the last thereof in the district for which he may be chosen." Each House of the General Assembly has the power to "judge the qualifications, elections, and returns of its members" (Section 38).

The next section of the Constitution empowers each house of the General Assembly to "determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause, and . . . punish for contempt any person who refuses to attend as a witness, or to bring any paper proper to be used as evidence before the General Assembly, or either house thereof, or a committee of either or to testify concerning any matter which may be a proper subject of inquiry by the General Assembly" (Section 39).

`The 1891 Constitution established compensation for legislators, and provided that such could be changed by law. Several such adjustments have been made and at the present time Kentucky legislators receive $100 per diem (salary) during the session, including Sundays and holidays. Persons elected to leadership positions in the General Assembly receive a proportionately higher per diem, ranging from $10 for committee chairmen for regularly scheduled meetings to $125 per day for the President of the Senate and the Speaker of the House. Legislators are prohibited from increasing their salaries for the session in progress. On the other hand, an opinion of any Attorney General has held that an expense allowance is neither salary nor compensation, and thus this restriction does not prohibit the members of the General Assembly from voting themselves an increase in expense allowance to be effective in the same term, an action which has been taken in the past.[34]

Kentucky legislators are authorized to receive a travel allowance during a session of one round trip per week between their homes and the state capital. The allowance is equal to the maximum mileage allowance permitted by the federal government, currently twenty-five cents per mile. Legislators are granted an additional expense reimbursement of $50 for supplies per session, a daily expense allowance during session equal to 110 percent of the expense allowance paid federal employees traveling in the capital city of Kentucky, presently, $74.80.

Between sessions Kentucky legislators are paid a salary of $100 per day for attending interim committee meetings and official legislative functions. Lodging and meal expenses for interim travel are reimbursed on an actual cost basis, and transportation expenses are reimbursed at the session rate. Kentucky legislators also receive a $950 monthly expense allowance during the interim.

Biennial v. Annual Sessions

Due to the increasingly complex problems faced by legislators and the difficulty inflation creates in making a biennial budget, the trend has been in many states to go to annual regular sessions. Kentucky continues to have regular sessions on a biennial basis, in accord with the Constitution, and meets in even numbered years. Six states meet biennially in odd-numbered years, and four others, while constitutionally required to meet biennially in odd-numbered years are also permitted to divide their session to meet in even-numbered years, and in practice have done so. Forty states, the majority, meet annually. However, in five of the annual meeting states, the second session is limited to consideration of specific types of legislation.

In nineteen states, including Kentucky, the legislature may not call itself into a special or extraordinary session. Restrictions on the selection of subjects for legislation, as well as the length of extraordinary sessions, vary greatly among the fifty states. The Kentucky General Assembly, like the legislatures in twelve other states, may not determine the subject matter to be considered in a special session at all. Thirty-two states, including Kentucky, have no limitations on the length of an extraordinary session.[35]

Functions of the Legislature

As can be expected, the work of the state legislature varies greatly, depending upon such factors as the size and population of the individual state. In terms of the number of bills and resolutions introduced and enacted, Kentucky is near the average among states of comparable size and population. In the 1994 regular session, 1,309 bills and 263 resolutions were introduced into the Kentucky General Assembly and, of these, 458 bills and 54 resolutions became law.[36]

The function of the General Assembly that receives the greatest attention is lawmaking. Constitutionally the General Assembly is given the basic job of writing the state's laws, levying taxes and appropriating funds to provide for the execution of the duties and services of the government.

Committees

To execute the function of law-making the General Assembly relies on two organizational structures. First, there is the committee system (discussed below). Simultaneously, there is the party organization. The Speaker of the House and Speaker Pro Tempore, and the President of the Senate and President Pro Tempore, are effectively selected in the majority party caucus, although, procedurally, nominations for each office are made from the floor of the respective chambers, with election by the entire body. Other legislative leaders are elected in their respective caucuses. The constitutional officers are nominated by the majority caucus, then elected on the first day of the regular session by the membership of the entire chamber in which they are to serve.

There are three kinds of committees in the General Assembly: 1) procedural, 2) special and 3) standing. There are three procedural committees in each chamber. There is the Committee on Committees, which selects and administers the employees of the legislature, appoints members and designates chairmen of committees, and refers bills to committees. The Enrollment Committee prepares enacted bills for delivery to the Governor. The Rules Committee is composed of the leadership in the respective chambers and determines which bills can be considered on the floor for debate, amendment, and vote, and when these deliberations shall take place.

Special committees are exactly that: committees created for special purposes. Most typical of special committees is the conference committee, which is created to eliminate the differences between House and Senate versions of the same bill. Another special committee is the committee of the whole. Either house may resolve itself into what is called the committee of the whole. This mechanism allows a chamber to debate freely a measure under committee rules rather than the rules of formal debate. The committee of the whole takes no final actions on a measure; rather it makes recommendation to the formal House body, which then takes appropriate formal action.

The law-making function of the legislature is executed through the standing committee system. There are similar systems of standing committees in the House and Senate. In 1968 the present structure was defined through the creation of fourteen standing committees; currently there are sixteen committees in the House, fourteen in the Senate. In the Senate each committee has no more than eleven members. Each Senator must serve on at least one committee. In the House each committee is limited to twenty-four members and each member must serve on at least one committee. In neither instance can a member serve on more than three committees.

Each standing committee has regularly scheduled meetings during the session. Between sessions, the committees meet as joint subcommittees of the Legislative Research Commission. This is often referred to as a the interim committee system. This arrangement is extremely important in allowing the legislature to function effectively. Consideration of issues can be more deliberate during the long time between regular sessions than in the sixty hectic legislative days of the regular session. In addition to providing the opportunity for fuller and more open debate, the interim process has the potential for speeding the legislative process. Through the interim committee process it is possible for both senators and representatives to extensively consider a legislative issue and to pre-file legislation, thereby resolving much of any potential controversy prior to the session.

Yet another recent change affecting the legislative process has been the televised coverage of the General Assembly by Kentucky Educational Television. Beginning with the 1978 regular session, KET has carried live coverage of the General Assembly and its activities during each legislative day. It is difficult to assess the extent to which this coverage has precipitated changes in the legislative process, if indeed there are changes. One thing most everyone will agree on, however, is that television coverage of floor proceedings does focus attention on the presiding officers.

A fourth change which assured greater legislative independence, one requiring even more subtle analysis than the effects of television coverage, and even more difficult to measure, is the evolution of new electoral alignments within the Commonwealth. With the advent of the new superhighways linking the furthest points of the state and the increased coverage of the state by the electronic news media, the possibility of broadly based media-oriented campaigns altered by the electoral strategies of many candidates for offices elected by state-wide campaigns, especially in the gubernatorial race. Rather than exclusive reliance on a campaign built on a structure of 120 exclusively county-based operations, it is possible for candidates to launch an appeal for a broadly based "popular" support for achieving electoral success.

Legislative Activities

There are two formal legislative activities of the General Assembly: bills and resolutions. A bill proposes to create new law, or change existing law by amendment or repeal or proposes to change the Constitution. There are numerous constitutional restrictions on the types of bills which may be proposed. For example, there are restrictions on the passage of local or special law. Also, all revenue bills must originate in the House of Representatives.

There are three types of resolutions. Joint resolutions have the effect of law and are treated as bills. Essentially they are used for proposals for ratifying amendments to the federal constitution and for items of temporary legislation. Concurrent resolutions, which must be approved by both houses and the governor, deal sometimes with legislative organization but more often communicate messages to local governments or other branches of government or express strong statements of opinion by the entire General Assembly. Simple resolutions are the most common type of resolution. They concern the affairs or opinions of only one house and are acted on only by that house. Simple resolutions deal with myriad items of varied interest, ranging from recognition of a victorious athletic team to a general statement of agreement on a topical matter.

When the legislature is in session, as well as when the interim system is functioning, the Legislative Research Commission prepares and supervises the publishing of the *Legislative Record*. This is an official digest of bills and a summary of legislative action. It provides a day-by-day record of proceedings, including standing committee activities, during the regular session (or during a special session) and a regular summary and announcement of committee activities during the period when the interim subcommittee system is in effect (the standing committees become "subcommittees" of the LRC during interims between sessions). The Legislative Research Commission also publishes the *House Journal* and the *Senate Journal,* which contain the official record of roll call votes and action taken on motions, and the *Acts of the General Assembly* at the end of each session. This provides a properly indexed set of *Acts* which become a part of the body of law of the Commonwealth. (These and other activities of the LRC are described in more detail in the next chapter.)

Lobbyists

Kentucky has one of the most strict set of laws governing the conduct of lobbyists, or legislative agents, as they are termed in law. Set out in a Legislative Ethics Act, adopted in Special Session in 1993, the rules pertaining to lobbyists govern their conduct in regard to their relations with legislators and their efforts to influence or secure passage of legislation.

For example, lobbyists are prohibited from: 1) serving as a fund-raiser campaign treasurer for a legislator or candidate, 2) making a campaign contribution to a legislator or candidate, 3) spending more than $100 per year on food or beverages for a legislator or a member of a legislator's immediate family, 4) going upon the floor of either the Senate or the House while the chamber is in session, or 5) accepting employment to lobby in exchange for compensation that is contingent upon the passage or defeat of legislation. Lobbyists, long required to register with the Attorney General, must now register with a newly-created Kentucky Legislative Ethics Commission, and report on moneys spent in their legislative agent activities.

Much negative comment is generally directed at lobbyists, or representatives for particular interests or points of view. Two very basic points should be borne in mind when evaluating such representation, however. First, to legislate effectively, the lawmakers *must* know the views of those who will be affected by the laws which they enact. Quite often the best source of information is those persons who will be most directly affected by the legislative action. Interest groups should not be the sole source to which a legislator turns in his decision making, but neither can they be ignored.

A second aspect of lobbying to be kept in mind is the concept of freedom of speech, the concept which grants the right to try to inform the legislators concerning an interest's point of view. Such rights are not unlimited, however, and should not be stretched to give protection to acts of bribery or other forms of corruption.

Interest factions have found that the interim committee system has put a greater strain on their functioning. It has meant that strong interest factions must maintain paid contacts in Frankfort for longer periods of time. No longer do the lobbyists function only for sixty legislative days. They must be constantly alert to the interim subcommittee activities as well. There are those who argue that the interim process has also opened the legislative process to a greater spectrum of opinion and that a greater diversity of views is possible, thereby hopefully creating more appropriate and effective legislation.

One of the most perplexing questions concerning legislative activity that is difficult to deal with effectively is the question of conflict of interests. The Kentucky Legislative Ethics Act also places some specific restrictions on legislators and employees of the General Assembly. These are the obvious areas of regulation. What is more difficult to assess is the relationship between the representative in the assigned role of "representative" of a constituency and the realty of the "interests" of that particular district and the particular viewpoints and interests and livelihood which the representative typifies. Despite all the abstract concepts such as "one person-one vote," inexorably the legislator represents a specific geographic area with a specific population and is the particular person exercising the vote for that constituency.

CHAPTER VI

LEGISLATIVE SERVICES

Although the state legislative branches in our system of democratic government are theoretically closer and more responsive to the will of the people than the executive and judicial branches, it is apparent that this has not always been the case. Early state constitutions characteristically gave great power to the legislative branch of government. The people in the early American colonies feared and resented the dictatorial powers of the British crown and such feelings translated into restrictions on the executive branch of government in the framing of the new state constitutions.

The citizens of the new United States appeared to recognize the state legislature as the most direct representation of the people's will in government, even though legislators generally represent smaller areas, both in geography and population, than the governor or other elected state officials. Yet most citizens considered their state senator or representative to be only a part-time official. The limited sessions and scant compensations directed by many state constitutions resulted in most legislators' having to earn a livelihood through some other profession, trade or business.

On the other hand, most of their constituents have always felt free to call upon their elected representatives for political services, favors, and advice pertaining to lawmaking and legal procedures at any time during their terms of office. In effect, the average state legislator in most districts is truly a "public servant," subject to demands upon his time from his constituents far beyond the remuneration he or she receives from the usually inadequate "per diem" (per day compensation) provided in most constitutions. This was not a great handicap in the early history of this country, especially in rural districts with a small population and in a relatively simple agrarian economy. But the work of legislators became increasingly complex and difficult after the Civil War and the Industrial Revolution. As states became more industrialized, commerce boomed and big business corporations, particularly railroads, increased their influence, and the job of the state legislator became more demanding.

In contrast to the state legislators, able to devote only part of their time to public affairs, because of low salaries and the need for other means of livelihood, governors had the benefit of administrative and professional staffs of ever increasing size and specialization. Consequently, the relative power and prestige of the chief executives became greater. It gradually became obvious that state legislators needed services not envisioned by the framers of those constitutions near the turn of the century.

Actually some forms of legislative service have always existed. The offices of clerk and secretary are the oldest of legislative staff positions. Such officials perform certain formal functions in the passage of law, including roll calls, reading of the bills, enrolling and engrossing of bills, and even serving at times as parliamentarians. Usually clerks and secretaries were formally elected by their respective legislative bodies. In many instances these positions were full-time only during and immediately following the session until the completion of the legislative journals and the publication of the new laws. Most were partisan selections by the majority party or through appointment tied to the tenure of a particular leader.

It should also be pointed out that the latter part of the 19th century also saw the rise of the Populist and Greenback political parties, which, in general, opposed the growing economic and political power of industry. During this period, many states, through constitutional revision, limited the activity of state government, endeavoring to reserve as much authority as possible for the people, with the hope of curbing the power of corporate industry.

That Kentucky was no exception to this trend is indicated by the limiting provisions of the Constitutional Convention of 1891. The unfortunate effect of such restrictions was that the performance of legislative functions in an increasingly complex society became even more difficult. The beginning of the 20th century saw a change, and the pendulum began to swing in the opposite direction.

Emergence of Legislative Services

Recognizing the importance of sound legislation to deal with the complicated problems of this age, states began in this century to provide information and services that would assist state legislators in performing their constitutional duties. Some states recognized that legislators needed to have some reliable source of information and facts before attempting to solve the many problems they faced.

The oldest form of these services is that usually referred to as legislative reference. This type of assistance to legislators consists of specialized library collections and perhaps the preparation of brief, factual reports on a variety of subjects for the members. New York and Massachusetts formed special legislative reference units in their respective state libraries before the turn of the century. During a session, one or more librarians were designated not only to develop the special collections but also to serve as reference librarians for legislators. The state of Wisconsin, in 1901, established the first permanent agency providing such services to legislators by creating a separate legislative reference library. Today legislative reference services are provided in all states, although the structural organization or agency providing these services varies from state to state.

Legislators also found early in the century that they needed some specialized and technical assistance in bill drafting. The bill drafting manual of Kentucky's legislative service agency points out that

> The quality of the legislative product depends not only upon the substance of laws, but upon their form and style. Inaccurate or careless drafting may produce bad laws, or even invalidate a measure entirely. It is essential to legislators, administrators, courts, and to the public that bills and resolutions be written in clear, correct, and unambiguous style.[37]

Today all states, American Samoa, Guam and Puerto Rico provide official bill drafting services for legislators, either as a primary responsibility under legislative direction, or as a secondary responsibility of other agencies, such as the Department of Justice, office of the Attorney General, Law Institute or Library, or State Bar Association.[38]

Not only is the bill drafting function important to legislators, but the proper codification of these laws after enactment is essential to all branches of government and to the legal profession. Over the years, with each new legislative session, old laws have been amended or repealed and new laws have changed certain parts of old laws. Necessary to this process is the research of many volumes of legislative acts, in order to prevent statutory inconsistencies or conflicts. Legal research can be time consuming and bewildering for attorneys, government officials and the layman as well. Today forty-nine states have an official agency responsible for statute revision. Although Delaware has no official agency performing this function, the revision of statutes and codification of the laws is performed by private individuals under contract to the company selected for publication of the Delaware state laws. In the same year in which its Legislative Reference Library was created, incidentally, the state of Wisconsin also established the first position of "revisor of statutes" on a permanent basis. The present century has also seen the inauguration of a number of small but important legislative services by legislative reference agencies and bill drafting staffs translating legislative decisions into proper statutory language; codification programs have made the body of the law more accessible and more manageable.

As the twentieth century has progressed, however, modern conditions have posed questions of such magnitude that legislators meeting briefly for either annual or biennial sessions, have found that the existing services were inadequate. The number of bills introduced, as well as those enacted, have increased greatly during this period of time. Under these conditions, legislators in various states became convinced of the need for a continuing review of legislative problems during the periods between legislative sessions, and for a staff of competent professions to conduct such review. In 1933 the legislature of the state of Kansas established the first agency known as a legislative council. Essentially such agencies are permanent, bipartisan, legislative committees which meet regularly between sessions, considering a variety of legislative problems and developing possible or alternative solutions. The so-called "legislative council movement" caught on rapidly following the lead of Kansas. Kentucky created a legislative council in 1936, as part of the State Government Reorganization Act of that year. Virginia created an "Advisory Legislative Council: that same year. Oklahoma and Rhode Island did the same in 1939. Forty-six states now have such agencies, although functions and names vary. The other four, Connecticut, Florida, Mississippi and Washington, provide somewhat comparable legislative services through Joint Committees on

Legislative Management, a Legislative Reference Library, or a Legislative Research Center.

The Legislative Council

The original Legislative Council (1936) in the Commonwealth of Kentucky was composed of fifteen members, including five representatives appointed by the Speaker of the House, and five administrative officials appointed by the governor. All of the provisions necessary for the establishment of an effective legislative research agency were included in the legislation creating the council. There was, however, some criticism at the time that the council was dominated by the appointees of the governor from their powerful executive positions. These department heads had large staffs which could be relied on to provide much information to the council members and the General Assembly.

On the other hand, the actual staff of the council was very small and, as time passed, insufficient appropriations, the lack of a full-time director and staff, and the conflict between the executive appointees and legislative members, all hindered the effectiveness of the council. This was particularly the case during the period from 1943 to 1947, when a Republican governor was responsible for naming five members representing the executive branch while the Democratic party had the majority in the General Assembly. In fact, the Kentucky Legislative Council was never very effective and became especially ineffective during and after World War II, although some legislators[39] were endeavoring to repeal the original law and enact new legislation to provide a strong, effective legislative service agency. The legislators were generally cognizant and quite critical of the fact that they were largely dependent upon Council members appointed from the executive branch to provide much of the factual data that they believed should come from a non-partisan staff or agency.

Emergence of the LRC

The basic ineffectiveness of the council's inadequate staff, the lack of sufficient financial support, and other conflicts made the time conducive to a change in concept especially in the event a governor with a view point coinciding with that of the majority of Kentucky legislators should be elected. This alignment occurred with the election of Earl C. Clements in November, 1947. Governor Clements had previously served as majority leader of the Kentucky Senate and had also represented his district in Congress. He recognized the need of the General Assembly for objective information provided by a non-partisan, specialized staff, selected and controlled by the legislative branch of government. Prior to his inauguration in December he sent a personal emissary (who later became the first Director of the LRC) to the Council of State Governments (then located in Chicago) to study the objectives, structure, and organization of legislative service agencies and to determine which agencies might serve as models.

On the basis of this study and the laws creating the state legislative service agencies, and upon input from experienced leaders of the Kentucky General Assembly, a bill drafted for introduction in the 1948 regular session included most of the best provisions from the legislative council acts of Kansas, Missouri, and Illinois. This bill repealed the 1936 act which originally created the Kentucky Council, enacted an entirely new law to become effective September 1, 1948, established an *ex officio* Legislative Research Commission of seven members, appropriated sufficient funds for the biennium to make the agency independent of financial support from the executive branch, broadened the concept, and expanded the scope and type of services of the new agency.

The designated seven *ex officio* members of the Commission included the Governor as chairman (or he could name the Lieutenant Governor, constitutionally the President and presiding officer of the Senate, to serve as chairman), the President Pro Tempore of the Senate, the Speaker of the House, and the majority and minority leaders of both the House and the Senate. The question of the propriety of a governor or lieutenant governor, elected to the executive branch, serving as chairman of the newly created commission was discussed. Several competent attorneys, well versed in constitutional law, and also leaders in the General Assembly, maintained that, under the Kentucky Constitution, this was a necessary provision, if the commission were to operate legally in the interim between sessions. The Constitution says that the General Assembly, upon adjournment after sixty legislative days, no longer functions as a legislative body, unless called into extraordinary session by the governor. It therefore appeared that a joint interim legislative committee, convening to transact legislative business, might have questionable legality, particularly if paid per diem and travel expenses, without some direct joint effort with the executive branch, which had no such calendar limitations.

Following the first session of the newly created Legislative Research Commission, which took place on September 1, 1948, the day the new law became effective, Governor Clements designated the lieutenant governor (at that time Lawrence Wetherby) as the chairman of the new agency. The commission appointed a director and began to employ the necessary staff people to provide a new era of legislative services in Kentucky. Meetings of the commission were to be called by the chairman or on written request of any three members. For attending meetings members received their necessary and legal travel expenses plus the legal *per diem* permitted under law for legislative service during a session.

Stipulations regarding membership, size and organization have changed over the years. Today, the commission consists of sixteen members, comprised of eight Senate and eight House members, all *ex officio*. The Senate delegation consists of the President and President Pro Tempore, and the majority and minority floor leaders, caucus chairmen and whips. The House membership includes the Speaker and Speaker Pro Tempore, and the majority and minority floor leaders, caucus chairmen and whips. The lieutenant governor is no longer a member and the chairmanship is jointly shared by the President of the Senate and the Speaker of the House. The constitutional question of payments to what is, in effect, a joint interim legislative committee during the period when the General Assembly is not in session had not been raised before the Supreme Court of the State. Possible conflicts resulting from having two presiding officers of equal authority apparently have not developed thus far. Such conflicts could easily arise in the future if the President of the Senate and the Speaker of the House should come from different political parties, or even opposing factions of the same party. To say the least, it is an unusual structural organization unmatched in any other state.

Although the act of 1948 has been amended from time to time, usually in the direction of expanding the services and composition of the commission, the services provided are essentially as described below.

Legislative Research

The commission is authorized to undertake such studies as are directed by the General Assembly or as the commission itself, upon its own motion, requests between sessions. Thus a number of major research reports are published and distributed to members prior to each session of the General Assembly. These reports typically examine a problem and provide factual background and possible alternative solutions. As a matter of policy, the commission early decided not to make specific policy recommendations or to recommend specific legislation to the membership of the General Assembly unless directed to do so by action of that legislative body.

Legislative Reference

The commission established and maintains a legislative reference library for members of the General Assembly. This is primarily a working library, composed of a relatively large collection of current materials and documents dealing with governmental research publications and statutes from other states on a variety of subjects, from which the staff prepares factual memoranda upon request of legislators. Approximately five hundred such inquiries are researched per year with summaries of factual data prepared for the legislators.

Legislative Bill Drafting

The commission is authorized to provide bill drafting services to any member or committee of the General Assembly. More than two thousand bills and resolutions are normally drafted in response to requests of individual members at each regular legislative session. Bill requests vary in scope, some resulting from extended research and legislative proposals. In the decade prior to the creation of the Legislative Research Commission the function of bill drafting had gradually gravitated to the Revisor of Statutes' office, although a number of drafts were handled by the Attorney General's office, and some by individual legislators. However, in 1954 the General Assembly repealed the law establishing the office of the Revisor of Statutes as a separate agency and added this function and office to the Legislative Research Commission. Following each legislative session the staff of the commission codifies the new enactments, integrates them into existing statutes, and either publishes or contracts for the publication of the official *Kentucky Revised Statutes*. In this way this service can be completely coordinated under the direction of the commission and the General Assembly. The staff also prepares or contracts for the preparation of annotations of all court cases interpreting the statutes. These annotations are made available in printed publications. The commission is also authorized to conduct a program of continuing statutory revision; thus it eliminates or clarifies obsolete, conflicting and confusing portions of the statutes.

Legislative Housekeeping

The commission and its staff provide a number of unglamorous but nevertheless very important services to the General Assembly, which, for lack of a more descriptive name, may be termed "housekeeping services." In 1948, since the clerks of the two houses operated primarily only during the legislative sessions, the commission was authorized to take custody of all legislative property and equipment at the end of each session. This precaution was to prevent the disappearance of property purchased by the General Assembly, not an uncommon occurrence over the years. Today the commission, when the legislature is not in session, may authorize the expenditure of appropriated funds for the purchase, repair, or maintenance of furniture, equipment, materials, and supplies, and contract for any services needed by the General Assembly. The staff also assists the clerks of the House and Senate during sessions. All legislative printing is processed through the commission offices, legislative hearings are sometimes transcribed by the staff, professional staff services are provided to committees on request, and assistance is given in obtaining necessary equipment and supplies and arranging meetings.

Legislative Publications

The commission is responsible for editing and publishing the journals of the two houses and the legislative acts after each session of the General Assembly. The staff also prepares indices to these publications to facilitate their use.

During each session, the commission prepares and publishes a daily record of the action of the General Assembly. This publication, known as the *Legislative Record*,[40] is available to all members prior to convening each legislative day and reflects the status of all bills which have been introduced.

Kentucky Administrative Regulations Service

The Legislative Research Commission is charged with the responsibility of compiling, publishing and distributing administrative regulations filed by administrative bodies. The compilation is known as the Kentucky Administrative Regulations Service. The Commission is also responsible for printing on a monthly basis "The Administrative Register," a publication containing the complete text of every administrative regulation forwarded to the Commission. Administrative bodies are required to advise the Commission's regulation compiler of their intent to promulgate a regulation, as well as submit a copy of the proposed regulation, as a condition precedent to their binding effect and enforcement. Notices of intent to promulgate administrative regulations are also published in the Administrative Register. The register is available at cost to subscribers.

Administrative Regulation Review

The Administrative Regulation Review Subcommittee was created in 1984. The Subcommittee's duties include continuous study of the laws governing the promulgation of administrative regulations, and review and comment upon administrative regulations submitted to it by the Legislative Research Commission.

The Subcommittee may make a nonbinding determination that an administrative regulation is deficient based upon one or more statutorily specified reasons, including, that the administrative regulation (1) appears to be in conflict with an existing statute, (2) appears to have no statutory authority for its promulgation, (3) appears to impose stricter standards than required by federal mandate, without reasonable justification, or (4) is in excess of the administrative body's authority. Administrative regulations found deficient by the Subcommittee, and not subsequently amended by the promulgating authority to correct the deficiency, expire on adjournment of the next succeeding regular session of the General Assembly.

Administrative regulations are also reviewed by interim or standing committees of appropriate jurisdiction. The committees are empowered to make the same nonbinding determinations as the Administrative Regulation Review Subcommittee, and a finding of deficiency by a committee carries the same effect as a finding by the Subcommittee.

The Administrative Regulation Review Subcommittee is composed of seven members, no more than five of whom are members of the same political party. Members of the Subcommittee are appointed by the Legislative Research Commission for a period of two years. The Subcommittee is required to meet monthly.

Program Review and Investigations

The Legislative Program Review and Investigations Committee was established in 1978 (KRS 6.905). Sixteen members of the General Assembly are appointed for two-year terms. The committee is directed to make performance reviews of the operations of state agencies to ascertain the appropriate expenditure of funds and the effectiveness of the programs. It examines the operations, practices and duties of state agencies in terms of efficient utilization of space, personnel, equipment and facilities. The committee makes special studies and reports as requested by the General Assembly and conducts investigations as directed.

Personal Service Contract Review

This particular commission function began in 1978 with the creation of the Personal Service Contract Review Subcommittee. Meeting monthly, the seven-member subcommittee receives copies of every such contract negotiated by any state agency. Each contract so forwarded to the commission must be accompanied by documentation of the need for the service, and demonstration either that state personnel are unavailable to perform such service or that using such personnel to perform the service is not feasible. If the committee disapproves a contract, it is sent to the Secretary of Finance with a statement of the subcommittee's objections. The secretary may then uphold the subcommittee's position or override the subcommittee and allow the contract to stand. The secretary must notify the subcommittee of his decision within thirty days of receipt of the subcommittee's objections.

Budget Review

The Legislative Research Commission is directed in KRS 7.310 to 7.380 to study and examine the expenditures of state agencies. For this purpose, the Legislative Research Commission has a budget review staff which reviews the programs and budgets of state agencies, conducts fiscal studies and provides data required for effective legislative review of proposals. During a session of the General Assembly, the budget review staff prepares fiscal notes on the implications of pending legislation.

Capital Projects and Bond Oversight Committee

The Capital Projects and Bond Oversight Committee began life as the Capital Construction and Equipment Purchase Oversight Committee. Established by the General Assembly in special session in 1979, effective January 1, 1980, the original committee was charged with the oversight of capital construction costing $200,000 or more and equipment costing $50,000 or more.

The 1988 Session of the General Assembly expanded the committee's jurisdiction to include oversight of leases and bonds issued by the state government, municipal corporations which exercise their authority on a state-wide basis, and institutions of higher education. Codified in KRS 45.750 to 45.810, the committee's present authority includes oversight responsibilities for capital construction items estimated to cost $400,000 or more, leases of real property with an annual rental cost exceeding $200,000, items of equipment estimated to cost $100,000 or more, leases of movable equipment if the total cost of the lease is $100,000 or more, and computer and telecommunication systems estimated to cost $400,000 or more.

The committee consists of seven members and must include members of both houses and both parties. The Legislative Research Commission appoints the members for a term of two years. The committee is required to meet monthly but may meet more frequently when necessary.

Office of Education Accountability

When the General Assembly reformed its system of public elementary and secondary education in 1990 through enactment of the Kentucky Education Reform Act (KERA), it also created an oversight agency, the Office of Education Accountability (OEA). The office, established under the direction of the Legislative Research Commission, is charged with the responsibility of monitoring the education system and implementation of the provisions of KERA, establishing a Division of School Finance to conduct an ongoing review of the education finance system, verifying the accuracy of reports of school, school district, and state education performance, investigating allegations of wrongdoing at all levels of the education system, conducting studies on the efficiency of the system of schools, making periodic reports to the Legislative Research Commission as directed by the Commission, and preparing an annual report on the implementation of the provisions of KERA.

The Office has access to all public records of every agency of state government, and of any institution, public or private, which receives state funds. The Finance and Administration Cabinet and the Governor's Office for Policy and Management is required to provide OEA with all records related to the allotment of funds to the Department of Education, local school districts, and other recipients of education funds. Any state agency receiving a complaint or information regarding a violation of KERA, is required to inform OEA of the complaint or information.

OEA, established by KRS 7.410, is headed by a deputy director appointed by the Legislative Research Commission. The deputy director is subject to the direction of the director of the Legislative Research Commission.

Capital Planning Advisory Board

The Capital Planning Advisory Board was established by the 1990 Session of the General Assembly. Consisting of fifteen members variously appointed by the Governor, the Chief Justice of the Supreme Court, the Speaker of the House, and the President of the Senate, the Board has the duty of preparing a state capital improvement plan for state spending for capital projects. The recommendations of the Board, as directed in KRS 7A.010 to 7A.170, are submitted to the heads of the three branches of government in each odd-numbered year, and include capital projects to be undertaken or continued by any state agency during the six year period commencing with the upcoming biennial budget. The Board is also required to provide a schedule for the next biennial budget of recommended appropriations of bond funds previously authorized, and a schedule of maintenance of physical properties and equipment of state agencies.

Kentucky Legislative Ethics Commission

The Kentucky Legislative Ethics Commission was created by the General Assembly, in conjunction with the passage of the Kentucky Code of Legislative Ethics, while meeting in special Session in February, 1993.

The Commission, governed by KRS 6.651 to 6.716, was established as an independent authority and an agency of the legislative department of state government. The Commission is composed of nine members, not less than three of whom are members of the state's largest minority party. Four members are appointed by the President of the Senate, four by the Speaker of the House, and one by the Legislative Research Commission. Two members must be former legislators, two members must be former judges, and four members must be selected from lists submitted by the Attorney General, Auditor of Public Accounts, the Judicial Retirement and Removal Commission, and the Registry of Election Finance. No current member of the General Assembly is eligible for appointment. Commission members are prohibited from (1) serving as a fund raiser for certain state-wide candidates or a candidate for the General Assembly, (2) contributing to the state-wide candidates or candidates for the legislature, (3) serving as an officer in a political party, or (4) participating in the operation of a political campaign.

The Commission is charged with an imposing array of responsibilities, including the administration and enforcement of the legislative ethics code, rendering advisory opinions on permitted and prohibited activities under the code, conducting investigations of violations of the code and hearings afforded persons accused of code violations, issuing orders resulting from findings of a violation, establishing and supervising a program of ethics education for new and incumbent legislators and legislative agents, registering legislative agents, and receiving and auditing expenditure reports filed by legislative agents. The Commission is empowered to employ an executive director and staff to assist in the conduct of its various activities.

Interstate Cooperation

The Legislative Research Commission is designated as Kentucky's Commission on Interstate Cooperation. In this capacity it carries forward Kentucky's participation in the work of the Council of State Governments, and in the National Conference of State Legislatures, and also designates

Kentucky's members of the National Conference of Commissioners on Uniform State Laws. Through these organizations, the commission, and consequently the General Assembly, frequently become involved in proposals concerning uniform laws, reciprocal agreements, interstate compacts or laws designed to help in relations between the Commonwealth and the federal government.

Periodically the Legislative Research Commission is directed to perform other functions as the General Assembly may direct. For example, Governor Clements, on February 1, 1949, created by Executive Order the Constitution Review Commission, composed of seven members appointed by the governor, for the purpose of studying the Constitution and reporting recommendations in 1950. The General Assembly in that year established the commission by statute, but in turn abolished it in the 1956 session and transferred its functions to the Legislative Research Commission.

Council of State Governments

In the general area of legislative and governmental services the Commonwealth of Kentucky and members of the General Assembly are fortunate in having located in Lexington the national headquarters office of the Council of State Governments. This organization originally developed from action of the American Legislators' Association Board of Managers in 1933,[41] is a non-partisan group belonging to all the state governments and supported through state appropriations. The mission of the council is to strengthen the states under the American system of federal government, and it has been described as "a research and service tool forged and shaped by the states." Founded upon the concept that state governments should have a central agency that would serve every state, the council's "mandate is to conduct research on state programs and problems; maintain an information service available to state agencies, officials and legislators; issue publications; assist in state-federal liaison; promote regional and state-local cooperation; and provide staff for affiliated organizations." The Articles of Organization of the Council of State Governments recognize two forms of association with the council by various groups of state officials– affiliated and cooperating. Currently the council recognizes thirty-three such groups– twelve in the affiliated category and thirty-six "cooperating," or recognized by the Council's Executive Committee as organizations with which they maintain continuing cooperative arrangements.[42]

Examples of the twelve affiliated organizations associated with the council are the National Association of State Auditors, Comptrollers and Treasurers, the Conference of Chief Justices, the National Association of Attorneys General, the National Conference of Lieutenant Governors, the National Association of State Purchasing Officials and the Conference of State Court Administrators. The organizational structure of the council was changed in 1975 to provide greater legislative and executive representation by designating that the governor and a legislator from each House and Senate among the fifty states be a member of the Governing Board. This board, operating through an expanded sixty-six member Executive Committee in between meetings of the Governing Board, determines policy and controls the funds and property of the council. The Governing Board also determines the schedule of contributions made by the several states financially supporting the activities of the Council.

The national headquarters of the Council of State Governments had been in Chicago until the latter part of the last decade. In 1966 the Governing Board of the council decided for various reasons that the headquarters of the council should be moved out of Chicago. A site selection committee, after studying a number of sites in various states from the east coast to the west, recommended to the Executive Committee that the national headquarters be located in Lexington. Kentucky had always been an active supporter and participant in the activities of the council and its affiliated organizations since its initial conception. It is therefore fitting that Edward T. Breathitt, Governor of Kentucky at the time, be commended for rallying to the support of the council's need for helping to provide a suitable location on forty acres of land belonging to the University of Kentucky, and constructing a modern office building adjacent to Spindletop Research for a national headquarters. His successor, Governor Louie Nunn, offered continued support and the council moved to this new building in Kentucky in May, 1969. The "recurring theme of the speakers at the dedication of these expanded facilities was the revitalization of state governments– one of the primary activities of the Council of State Government."[43] The location of the headquarters enables not only her legislators but also other Kentucky state officials to benefit from the accessibility of the expert staff, the research facilities, and the training courses of the council.

CHAPTER VII

THE EXECUTIVE BRANCH: OFFICE OF GOVERNOR AND ORGANIZATION OF THE EXECUTIVE BRANCH

The person elected Governor serves as the chief executive officer of state government. In 1792, Kentucky's first chief executive, Governor Isaac Shelby, set up a government that operated on state revenues of only $16,400.[1] In 1994, Governor Brereton Jones manages a workforce of approximately 36,000 full-time executive branch employees, a General Fund budget of $4.8 billion, and a budget of total available funds amounting to $11.6 billion. In addition, the Governor makes appointments to boards and commissions covering approximately 2,300 positions over a four-year period. One of the most powerful tools a Governor possesses in managing this bureaucracy is the preparation of an excutive budget that appropriates state revenues to the various state agencies and programs. The Governor shapes public policy primarily through the executive budget, but also through legislation submitted to the General Assembly, administrative regulations promulgated by agencies of the executive branch, and personal appearances. Because the structure of state government organization can impede the implementation of the Governor's policies, Governors more and more frequently make reorganization of state government a priority. Aside from his roles in the day-to-day management of state government operations, the Governor's other responsibilities include signing thousands of documents, declaring emergencies, calling the General Assembly into extraordinary session, making awards, and representing Kentucky before Congress, on out-of-state and international trips, and in negotiations and in legal disputes. The Governor also is the leader of his or her political party and retains personal roles while balancing the demands of a private person with those of the public office. The

Governor must move in and out of these roles while complying with the executive branch code of ethics enacted by the 1992 General Assembly. As chief executive officer, official representative of the Commonwealth, and political party leader, the Governor possesses considerable power and maintains a strong leadership position in Kentucky governmental and political activities. One noted Kentucky historian has described the office as follows:

> The office of supreme executive of the Commonwealth of Kentucky is shrouded in a rich aura of prestige and dignity and is bolstered up with an inordinate amount of power, even in the face of perennial legislative declarations of independence. This intoxicating power has on many occasions extended the reach of ordinary men beyond anything they could have attained in any other position.2

The Office of Governor

The office of Governor was unknown to common law and was created by state constitutions. The Governor of the Commonwealth of Kentucky, therefore, possesses the powers granted him or her by the Constitution of Kentucky and the statutory powers granted by the Kentucky General Assembly. The executive powers granted by the Constitution of Kentucky to the Governor are limited by the provisions in the Constitution providing for eight other executive officers to be elected independently of the Governor. The other officers are: Attorney General, Secretary of State, State Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, and three Railroad Commissioners. Prior to a 1992 amendment, the Constitution also required the independent election of the Lieutenant Governor and Superintendent of Public Instruction. The amendment requires the Governor and Lieutenant Governor to run together for election on a slate and it abolished the office of Superintendent of Public Instruction.

Terms, Qualifications, Salary

Section 69 of the Constitution of Kentucky provides: "The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the 'Governor of the Commonwealth of Kentucky'". The Governor is elected to a term of four years as provided in Section 70. As noted above, a 1992 amendment adopted by the voters requires the Governor and Lieutenant Governor to run for election as a slate. Section 71 as amended in 1992 allows the Governor elected in 1995 to run for reelection for a second consecutive term for the first time since adoption of the 1799 Constitution. Section 72 requires the Governor to be at least 30 years of age and have been a resident of Kentucky for at least 6 years preceding the election. Compensation for the Governor is required by Section 74 to be fixed at law. KRS 64.480(4) directs the Department of Local Government to compute by the second Friday in February each year beginning in 1985, an adjusted salary of the Governor by multiplying $60,000 by the increase in the consumer price index during the period January 1, 1984, to the beginning of the then current calendar year. This formula fixed the Governor's salary at $82,463 in 1994. In addition, the Governor receives an expense allowance of $18,000 per year, living quarters in the Executive Mansion, and staff for the Mansion. A reasonable amount for the consumption of food and supplies by the Governor and his or her family is required by KRS 42.035 to be deducted from the salary of the Governor. Expenses for the Mansion and travel expenses are handled by the Finance and Administration Cabinet. The Governor and his or her family are provided 24-hour security by the Kentucky State Police in the Mansion and while traveling. The Governor is provided with a motor vehicle driven by a state trooper and use of state aircraft.

Constitutional Powers

Although Kentucky has had four constitutions, 1792, 1799, 1850, and 1891, the constitutional powers of the Governor of the Commonwealth have remained basically the same since 1792. The first Constitution placed no restrictions on the number of terms a Governor could serve, provided for election of the Governor by electors of the Senate, and required only two years of residency in the state prior to election. The 1799 Constitution prohibited a Governor from succeeding himself, required election by the people, provided a six year residency requirement, and created the office of Lieutenant Governor. The 1891 Constitution removed a provision that prohibited clergymen from being elected Governor or to the General Assembly and gave the Governor the line-item veto on appropriation bills. But all four constitutions have granted the Governor supreme executive power, deemed him commander-in-chief of the militia, given him pardoning power, authorized him to obtain information on matters of state from executive officers, empowered him to call the General Assembly into extraordinary session, given him appointive powers, required him to report on the state of the Commonwealth and to faithfully execute the laws, and required that his salary be fixed by law. The powers granted to the Governor under the Constitution of Kentucky can be categorized as administrative, judicial, and legislative.

Administrative Powers. Section 69 vests in the Governor the supreme executive powers. Section 81 provides that the Governor is to take care that the laws are faithfully executed. These two sections make it clear that the Governor is the chief executive of state government but are vague as to how the Governor is to function in that role. The Governor is authorized by Section 78 to require information from officers of the Executive Branch upon any subject relating to the duties of their offices. Section 75 designates the Governor as Commander-in-Chief of the militia. Section 76 empowers the Governor to fill vacancies.

Judicial Powers. Section 77 authorizes the Governor to "remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment." In case of treason, the Governor may "grant reprieves until the end of the next session of the General Assembly."

Legislative Powers. Section 88 requires every bill that has passed two Houses to be presented to the Governor who has ten days to act on the bill. If the Governor signs the bill, it becomes law. He may veto the legislation and return it to the General Assembly with his objections. If a majority of the members elected to each house approve the bill, the veto is overridden and the bill becomes law. If the Governor fails to either sign or veto the bill during the ten day period, the bill becomes law without the Governor's signature. As to appropriations bills, the Governor may exercise a line-item veto by disapproving specific sections of the bill which sections shall not become law unless overridden by the General Assembly. A vote to adjourn the General Assembly (Section 89), a state constitutional amendment (Section 256), and a tax referendum under Section 171 are not subject to the Governor's veto.

Section 79 directs the Governor to give to the General Assembly information of the state of the Commonwealth and recommend to their consideration such measures as he may deem expedient. Section 80 authorizes the Governor to convene the General Assembly on "extraordinary occasions." The Governor must convene the General Assembly by proclamation that states the subjects to be considered and no other subjects may be considered. If the two houses disagree as to the time of adjournment, the Governor "may adjourn them to such time as he shall think proper, not exceeding four months."

Statutory Powers

The Constitution gives the Governor administrative powers to be the chief executive of state government. Sections 69 and 81, as noted above, vest in the Governor the supreme executive power of the state and require the Governor to see that the laws are faithfully executed. These Constitutional provisions are vague and do not specify the functions of the Governor as the administrative head of state government. It is left to the General Assembly through enactment of statutes to breathe life into these and the other broad provisions pertaining to the Governor. Take for example, Section 74 of the Constitution. It reads: "Compensation of Governor. He shall at stated times receive for his services a compensation to be fixed by law." From this simple provision, the General Assembly has enacted laws to set the Governor's salary, establish an expense allowance, provide for living quarters with staff, authorize use of a state vehicle and state aircraft, direct a state agency to handle expenses, and provide for 24-hour security for the Governor and his or her family. Or consider Sections 69 and 81, the two sections that are the core of the Governor's constitutional authority to act as chief executive of state government. Section 69 reads:

> The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the "Governor of the Commonwealth."

Section 81 reads:

> He shall take care that the laws be faithfully executed.

It would be impossible for a Governor to administer a modern state government with only the vague powers granted by these archaic constitutional provisions. The Constitution is silent on the employment of staff by the Governor, the appointment of department heads, and fixing of salaries by the Governor. These and other administrative powers of the Governor were enacted into law by the General Assembly.

Although Isaac Shelby became Kentucky's first Governor in 1792, the Governor's authority to act as administrative head was not defined by the General Assembly until 1936 when it enacted the Reorganization Act of 1936. That Act authorized the Governor to appoint heads of departments to serve at the pleasure of the Governor. It also empowered the Governor to authorize a department head to establish additional divisions, change division names, merge divisions, or transfer functions and staff. At least nine of the current statutes in KRS Chapter 12 on administrative organization of the Executive Branch originated with the 1936 Reorganization Act: KRS 12.040, 12.050, 12.060, 12.070, 12.080, 12.090, 12.100, 12.110, and 12.120. Some of the administrative powers of the Governor authorized by the General Assembly in KRS Chapter 12 are:

- ☑ KRS 12.029 authorizes the Governor to appoint advisory or study committees on reorganization
- ☑ KRS 12.040 authorizes heads of departments to have control of their departments and to be appointed by the Governor for terms up to 4 years
- ☑ KRS 12. 050 authorizes the appointment of deputy head of departments and directors of divisions and institutions
- ☑ KRS 12. 060 authorizes heads of departments, with approval of the Secretary of Finance and Administration, to establish subordinate positions and abolish positions and to change duties, titles, and compensation of existing offices and positions

- ☑ KRS 12. 070 provides the requirements for appointment to administrative boards and commissions
- ☑ KRS 12. 080 authorizes the Governor to prescribe general rules of conduct for administrative departments
- ☑ KRS 12.100 authorizes the Governor to resolve conflicts between agencies
- ☑ KRS 12. 110 requires the Governor to submit to the Legislative Research Commission annual reports of the finances and operations of the state.

Also codified in KRS Chapter 12 are powers granted the Governor by the General Assembly to issue executive orders to reorganize the Executive Branch between legislative sessions.

Executive Office of the Governor

KRS 11.070 authorizes the Governor to "employ reputable, qualified, experienced auditors, accountants, clerks, bookkeepers and any other skilled or professional services to perform any service which the Governor deems proper and may direct." KRS 11.110 authorizes the Governor to fix the compensation of persons employed by him. If no funds were appropriated to compensate the person, the Governor may direct that payment be made out of the Governor's emergency fund. KRS 11.040 provides that the Governor may appoint such "persons as he deems necessary for the proper operation of his office to perform such duties as the Governor may require of them."

The Executive Office of the Governor includes: (1) the Governor's Office; (2) the Office of Secretary of the Cabinet (KRS 11.040); (3) the Governor's Office for Policy and Management (KRS 11.068); (4) the Governor's Office for Program

Administration (KRS 11.068); (5) the State Planning Committee and State Planning Fund (KRS 147.070-147.120); (6) the Governor's Executive Cabinet (KRS 11.065); (7) the Governor's General Cabinet (KRS 11.060); and (8) the Governor's Financial Policy Council (KRS 147B.100). Total funds appropriated to the Executive Office of the Governor in Fiscal Year 1994 is $5,156,500.

Gubernatorial Succession Upon Inability To Dishcarge Duties

Section 84 of the Constitution as amended in 1992 provides that if the Governor is impeached and removed from office, dies, refuses to qualify, resigns, certifies that he or she is unable to discharge his or her duties, or is unable to discharge the duties of the office, the Lieutenant Governor shall exercise the power and authority of the Governor until another Governor is elected or until the Governor is able to discharge his or her duties. The Attorney General is authorized to petition the Supreme Court to have the Governor declared disabled if the Governor is unable to discharge his or her duties due to physical or mental incapacitation. If the Supreme Court certifies such disability, the Lieutenant Governor shall assume the duties of the Governor.

Prior to the 1992 amendment, the Lieutenant Governor assumed the powers of Governor for the period of time while the Governor was absent from the state. An example of what can happen under such a provision was the special session called during Governor Laffoon's administration (1931-1935). When Governor Laffoon went to Washington, D.C. to request $50,000,000 for road construction, Lieutenant Governor A. B. "Happy" Chandler called a special session to pass a mandatory primary election bill to replace the system of nomination at convention. Governor Laffoon quickly returned and signed a revocation order to cancel the session. The Court of Appeals held the call was valid. It was said that Governor Laffoon believed his choice to succeed him as Governor would be nominated, while Lt. Governor Chandler felt he could win the nomination by popular vote at a primary election.3 The primary election bill passed and became law in February, 1935 and Lt. Governor Chandler won the primary election and was elected Governor in November, 1935.

Gubernatorial Transition

The Governor of the Commonwealth of Kentucky is elected in November and takes the oath of office only five weeks later in December. On the Tuesday after the first Monday in January, the General Assembly convenes in regular session and the Governor must present his executive budget by the fifteenth legislative day, only seven weeks after inauguration. Thus, a newly elected Governor has little time to set up operations to receive applications for staff appointments, handle phone calls and scheduling requests, and gather information to prepare a budget. The 1972 General Assembly recognized the problems inherent in such a tight time schedule and enacted into law KRS 11.210 to 11.260 on gubernatorial transition to "promote the orderly transfer of the executive power in connection with the expiration of the term of office of a Governor and the inauguration of a new Governor."

KRS 11.230 directs the Secretary of the Finance and Administration Cabinet to provide the Governor-elect necessary services and facilities within the State Capitol complex. According to KRS 11.240, the outgoing Governor must give the Governor-elect all official documents, vital information and procedural manuals as requested. The Governor-elect, pursuant to KRS 11.250, is entitled to examine the budget request of the Executive Branch of government, to sit in on hearings, receive information upon which the Governor's budget recommendation is made, prepare revisions and additions, and receive assistance from the budget director. Expenses of the transition shall be paid by the Finance and Administration Cabinet pursuant to KRS 11.260.

Power of Governor to Reorganize by Executive Order

Courts have held that reorganization of the Executive Branch of state government is legislative in nature. The Supreme Court of Kentucky in *Brown v. Barkley,* 628 SW2d 616 (1982) stated at page 623 that "when the General Assembly has placed a function, power or duty in one place there is no authority in the Governor to move it elsewhere unless the General Assembly gives him that authority." In *LRC v. Brown,* 664 WS 2d 907 (1984), the Court at page 930 held that:

> Even though the Governor has the supreme executive power of the Commonwealth (KY. Const. Sec. 69), he cannot transfer the functions of an existing, legislatively-created executive agency or department to another without legislative authority.

The Court went on to say at page 931 that "the Governor has no inherent power to reorganize" and that "reorganization is legislative in nature."

The Kentucky General Assembly, recognizing that changes in state government organizational structure may need to be made during the interim between legislative sessions, enacted procedures in 1962 codified in KRS Chapter 12 to enable the Governor to temporarily effect a change in the structure of the Executive Branch. The authority granted to the Governor does not extend to reorganization of an organizational unit or administrative body headed by an elected state executive officer, unless that officer has made a request in writing. An elected state executive officer other than the Governor and the Kentucky Economic Development Partnership may also temporarily effect a change in organizational structure, but only as to an organizational unit or administrative body that the officer or Partnership heads. A temporary reorganization is effected by filing an executive order with the Legislative Research Commission and the Secretary of State. The temporary reorganization plan terminates 90 days after sine die adjournment of the next regular session of the General Assembly. Legislation is recommended to the General Assembly to confirm the plan. If the General Assembly fails to enact the plan, the previous organizational structure is reinstated upon termination of the temporary plan and the plan cannot be effected prior to the next succeeding session of the General Assembly.

Executive Branch Organization

During the early years of this century, state governments were faced with rising costs and demands for government services. Today, state governments continue to confront those problems, but they were compounded at the turn of the century because, in most states, the Governor had not exhibited many characteristics of an executive manager. In 1917, in response to demands for a state government that could be more efficiently administered, Illinois became the first state to adopt a reorganization plan. Prior to World War II, approximately thirty states followed Illinois in enactment of reorganization plans that made most administrative agencies responsible to the Governor.

Although Kentucky didn't immediately follow Illinois and enact major reorganization legislation, Kentucky's Governors prior to the 1936 reoganization did act to change the structure of state government. In 1918, the General Assembly enacted the state's first budget system during the administration of Governor Augustus Stanley (1915-1919). In 1922, during the term of Governor Edwin Morrow (1919-1923), the Kentucky General Assembly created an efficiency commission with members appointed by the Governor and approved by the Senate. Governor Morrow in his address to the 1920 General Assembly had called for the abolition of useless offices and consolidation of commissions and boards.4 The commission was charged with inquiring into all state government boards, departments, and commissions and making recommendations on "curtailment of expenses and increased efficiency." No major reorganization of the executive branch resulted. Governor William Fields (1923-1927) presented a number of bills on organization of state government to the 1926 General Assembly. Legislation that year created the State Park Commission, the Department of Motor Transportation, the Purchasing Commission, Securities Department, State Highway Commission, Budget Commission, Office of State Budget Officer, State Bank Examiners, and Commissioner of Pardons. In 1930, the Governor lost some authority to administer the executive branch when the General Assembly restricted the Governor's powers of appointment. A Republican, Flem Sampson, was Governor (1927-1931) while a Democrat was Lieutenant Governor. The new law, vetoed by Governor Sampson but overridden by the General Assembly, required the Governor to submit to the Senate ten days before adjournment a written list of persons appointed to office where statutes required Senate confirmation. Failure to do so meant the offices were deemed vacant and the Lieutenant Governor was authorized on adjournment of the Senate to make the appointments.

Administrative Reorganization Act of 1934

By 1934, the executive branch in Kentucky consisted of sixty-nine statutory boards, offices, agencies, and commissions, in addition to the constitutional offices. Governor Ruby Laffoon (1931-1935) proposed and the

General Assembly enacted in 1934 the Administrative Reorganization Act. The Executive Branch was organized under seventeen administrative departments and seven independent agencies. The Act also created the Executive Cabinet. The 1934 Reorganization has not been considered a true reorganization because most of the major departments were headed by commissions or elected officials, rather than a single person appointed by the Governor. The Department of Public Property, for example, consisted of the Governor, who acted as chairman, the Auditor, the Treasurer, the Secretary of State, the Attorney General and four other persons. The Department of Finance and Budgetary Control consisted of the Governor, Chairman of the State Tax Commission, and the Secretary of the Executive Cabinet.

Reorganization Act of 1936

The Reorganization Act of 1936 was enacted at the Extraordinary Session of the General Assembly, called by Governor A.B. "Happy" Chandler in February, 1936. In his proclamation Governor Chandler (1935-1939) stated that it was essential that the "multiplicity of scattered boards, commissions, departments, and other agencies" of state government be brought together into a systematic, orderly plan. Insurance Commissioner J. Dan Talbott estimated the Reorganization Bill would save the state $2,000,000 annually.5 The Reorganization Act of 1936 largely abolished boards and commissions, except those having quasi-legislative and quasi-judicial functions. More that 50 administrative agencies were consolidated by the 1936 reorganization under ten statutory departments: finance, highways, health, welfare, mines and minerals, library and archives, conservation, business regulation, and industrial relations.

With enactment of the 1936 Reorganization Act, the General Assembly gave the Governor statutory administrative powers (KRS Chapter 12) that had been lacking to enable him to be the administrative head of state government. This came on the heels of a 1935 decision of the Court of Appeals of Kentucky, *Royster v. Brock*, 79 SW2d 707, in which the Court at page 709 stated that the Governor, an office unknown to common law, "has only such powers as the Constitution and Statutes, enacted pursuant thereto, vest in him, and those powers must be exercised in the manner and within the limitation therein prescribed." The 1936 Reorganization Act, among other things, authorized the Governor to appoint heads of departments to serve at the pleasure of the Governor. It empowered the Governor to authorize a department head to establish an additional division or divisions, or to divide or combine existing divisions, or to change the name of a division, or transfer functions and staff from one division to another within a department. It required members of boards and commissions to be appointed by the Governor.

Changes Between 1936 and 1973 Reorganizations

Governor Earle Clements made a number of organizational changes while he was Governor from 1947 to 1950. The Kentucky Agriculture and Industrial Development Board, the forerunner of the Commerce Department, was established. The Legislative Council created in 1936 was abolished and a nonpartisan Legislative Research Commission was created in 1948. The Conservation Department was reorganized. The Insurance Commission was reorganized and the entire insurance code rewritten. The Kentucky Building Commission was created and one of its first projects was the New Capitol Annex.

During the terms of Governors Simeon Willis (1943-1947), Earle Clements (1947-1950), Lawrence Weatherby (1950-1955), A.B. "Happy" Chandler (1955-1959), and Bert Combs (1959-1963), as demands for new services grew, fourteen departments were created within the executive branch. Those departments were:

Department of Aeronautics (1948)
Department of Alcoholic Beverage Control (1944)
Department of Banking (1946)
Department of Fish and Wildlife Resources (1944)
Department of Economic Security (1948)
Department of Economic Development (1956)
Department of Insurance (1950)
Department of Motor Transportation (1950)
Department of Mental Health (1952)
Department of Personnel (1956)
Department of Public Relations (1956)
Department of Public Safety (1956)

Department of Child Welfare (1960)
Department of Parks (1960)

By 1960, two of the ten departments established in 1936 no longer existed. In 1954, the Department of Library and Archives was abolished and in 1960 the Department of Business Regulation was eliminated. In 1962, the Department of Libraries was established, the Department of Public Relations was renamed the Department of Public Information, the Department of Economic Development was renamed the Department of Commerce, and the Department of Welfare was abolished and replaced by the Department of Corrections. In 1964, during the administration of Governor Edward Breathitt (1963-1967), the department of Conservation was renamed the Department of Natural Resources. The Commission on Women was created in 1970 during the term of Governor Louie Nunn (1967-1971).

It was also during this period that the General Assembly enacted legislation creating a procedure that allows the Governor to change the structure of the Executive Branch between legislative sessions. As noted above, the 1962 General Assembly passed legislation that authorized the Governor to issue a temporary executive order to effect organizational changes which would be valid until the next legislative session.

Reorganization of 1973

The "multiplicity of scattered boards, commissions, departments, and other agencies" that confronted Governor Chandler in 1936 were matched by others facing Governor Wendell Ford in 1972. Thirty-six years after the 1936 reorganization, there were more than sixty departments and administrative agencies and 210 boards, commissions, and committees reporting to the Governor. State revenue collections increased from $11.5 million in 1936 to

$845 million in 1971. The expansion of public services and governmental programs led to duplication of services and inefficiency in operations.

On November 28, 1972, Governor Wendell Ford issued the Governor's Reorganization Report No. 1, which set a framework of government that would be manageable, responsive, accountable, and flexible. The Executive Branch was to be organized, as of January 1, 1973, into six Program Cabinets: Consumer Protection and Regulation, Development, Education and the Arts, Human Resources, Safety and Justice, and Transportation. It also called for consolidation of functions of the Department of Finance and the Kentucky Program Development Office in the new Executive Department of Finance Administration. In Reorganization Report No. 2, issued on January 3, 1973, the Department of Environmental Protection, which was created by the 1972 General Assembly effective January 1, 1973, was merged by Executive Order 73-1 with the Department of Natural Resources to create the Department for Natural Resources and Environmental Protection. During 1973, the Department of Transportation was created in March, the Cabinet for Human Resources became the Department of Human Resources in August, and the Department of Justice was created in September. By October, 1973, there were three Program Cabinets (Development, Education and the Arts, and Consumer Protection and Regulation) and four additional departments (Human Resources, Justice, Natural Resources and Environmental Protection, and Transportation).

Reorganization Process Continues

In 1978, a fifth department (Energy) was added during Governor Julian Carroll's administration (1974-1979). In 1982, during Governor John Y. Brown's administration (1979-1983), the five departments received Cabinet status, as did the Finance and Administration Department, the Bureau of Corrections, and the Department of Revenue. In 1984, during the administration of Governor Martha Layne Collins (1983-1987), the Labor Cabinet and Tourism Cabinet were added, to create a system of thirteen program cabinets. During the term of Governor Wallace Wilkinson (1987-1991), the Energy Cabinet was abolished in 1989 and the Workforce Development Cabinet was created in 1990. During the current term of Governor Brereton Jones, the Corrections Cabinet was merged into the Justice Cabinet in 1992, and the Education and Humanities Cabinet was renamed the Education, Humanities, and Arts Cabinet in 1994.

Current Structure of the Executive Branch

The Executive Branch of Kentucky state government is organized into twelve Program Cabinets, which are each headed by a Secretary, who is appointed by the Governor. The Program Cabinets are listed in KRS 12.250 and the agencies within each Cabinet are designated in KRS 12.020. The Program Cabinets in 1994 are:

Economic Development Cabinet
Education, Humanities, and Arts Cabinet
Finance and Administration Cabinet
Human Resources Cabinet
Justice Cabinet
Labor Cabinet
Natural Resources and Environmental Protection Cabinet
Public Protection and Regulation Cabinet
Revenue Cabinet
Tourism Cabinet
Transportation Cabinet
Workforce Development Cabinet

Each Secretary acts as chairman of the related Cabinet, is a member of the Governor's Cabinet, and serves as the Governor's liaison for providing direction and coordination of the various departments, boards, and commissions. The General Assembly established the authority, powers, and duties of the Secretaries in KRS 12.270.

The Governor's General Cabinet is described in KRS 11.060. It is composed of the heads of the constitutional and statutory administrative departments and Program Cabinet Secretaries. The Governor serves as chairman of the General Cabinet, which is attached to the Office of the Governor and is not a separate department or agency.

The Governor's Executive Cabinet, as provided in KRS 11.065, consists of the Secretaries of the Program Cabinets, the Secretary of the Governor's Executive Cabinet, and the Lieutenant Governor. The cabinet meets not less than once every two months. It is part of the Office of the Governor and is not a separate department or agency. The members of the Cabinet are "major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform such other duties as the governor may require of them."

The Secretary to the Governor's Executive Cabinet is an agency of state government created under KRS 11.040. The Secretary is appointed by the Governor and is "responsible for implementing all policies of the Governor, coordinating all activities of the Governor's Executive Cabinet, and advising and consulting with the Governor on all policy matters affecting the state."

Five administrative bodies, under KRS 12.023, are attached to the Office of Governor rather than a Program Cabinet. They are: Council on Higher Education, Department of Military Affairs, Department of Local Government, Kentucky Commission on Human Rights, and Kentucky Commission on Women. In addition, the Department of Personnel is attached for administrative purposes to the Office of Secretary of the Executive Cabinet.

Descriptions of the offices of Constitutional offices and the cabinets, departments, boards, and commissions of the Executive Branch can be found in *The Executive Branch of Kentucky State Government,* Legislative Research Commission Informational Bulletin No. 171.

Executive Branch Code of Ethics

The 1992 General Assembly enacted the Executive Branch Code of Ethics. The Act covers all major management personnel in the Executive Branch including the Governor. KRS 11A.040 lists certain acts that are prohibited including the disclosure or use of confidential information, receipt of any interest or profit arising from use or loan of public funds, and acting as agent for the state in the transaction of any business with himself or any business in which he or a member of his family has an interest greater than five percent of its value. For six months following termination of employment with the state, officers and public servants are prohibited from accepting employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last 36 months of his tenure. KRS 11A.050 requires the filing of a statement of financial disclosure annually with the Executive Branch Ethics Commission. The five-member commission is appointed by the Governor pursuant to KRS 11A.060.

NOTES

1. Sylvia Wrobel and George Grider, Isaac Shelby Kentucky's First Governor and Hero of Three Wars, The Cumberland Press, Danville, Ky. 1974, p. 89

2. Thomas D. Clark, "The Kentucky Governorship: An Overview," an introductory essay in Lowell Harrison, Kentucky's Governors 1792-1985, The University Press of Kentucky, Lexington, Ky 1985, p.xxi.

3. Frederick Wallis and Hambleton Tapp, A Sesqui-Centennial History of Kentucky, Vol. 2, The Historical Record Association, Hopkinsville, Ky, Louisville, Ky., and Little Rock, Arkansas, 1945, p. 749.

4. Lowell Harrison, Kentucky's Governors 1792-1985, The University Press of Kentucky, Lexington, Ky. 1985, p. 130.

5. Frederick Wallis and Hambleton Tapp, A Sesqui-Centennial History of Kentucky, Vol. 2, The Historical Record Association, Hopkinsville, Ky, Louisville, Ky., and Little Rock, Arkansas, 1945, p. 750.

CHAPTER VIII

THE JUDICIARY

Prior to 1792, when Kentucky became a state, its courts were merely an extension of the Virginia judicial system. The framers of the first constitution divided the new government into three departments, one of which was the judiciary. Article V, Section 1 of the first Kentucky Constitution (1792) vested the judicial authority of the state "in one Supreme Court . . . styled the Court of Appeals, and in such inferior courts as the legislature may . . . ordain and establish." Fortunately these judicial provisions were flexible. Only the Court of Appeals had constitutional status.

The Legislature was authorized not only to provide for additional courts but also to define the details of their organization and jurisdiction. Judges of all the courts held their offices "during good behavior," although the governor could remove any of them for any reasonable cause upon concurrence of two-thirds of each House of the General Assembly. The Constitution (1792) required that they receive "adequate compensation," and this amount, once fixed by law, could not be reduced while the judges were in office.

The first judicial system was largely a pattern of the Virginia system. It consisted of local trial courts of limited jurisdiction in each county, a central court with state-wide criminal jurisdiction, and the constitutionally created Supreme Court. This system lasted only three years, as the 1795 General Assembly began to experiment with changing the courts. That session of the legislature abolished the central criminal court, as well as the trial jurisdiction of the Supreme Court, reorganize the system, and created for the first time a state-wide trial court system.

Courts Under the 1799 Constitution

A high degree of flexibility in the judicial system was retained in the 1799 Constitution, although that document did require a court in each county of the state. This county court was to co-exist with the Justices of the Peace the first Constitution(1792) mandated in each county.[xviii]

Early in the 19th century, the Court of Appeals became embroiled in a controversy with their decision declaring unconstitutional the Replevin and Endorsement Act, (usually referred to as the "Relief Act"). The three-judge court declared that Act to be a violation of the right of contract guarantees contained in the federal constitution. The law had not only the support of the legislators but apparently a very vocal majority of the voters. Supporters of the Relief Act accused the court of exceeding its authority by even questioning the acts of the elected representatives of the people. The state's voters were angered to the point that petitions poured in from all parts of the state asking that the governor rebuke the three judges. It is perhaps fortunate that the action to rebuke the judges and reorganize the Court of Appeals failed to receive the necessary two-thirds majority vote of the General Assembly. The court, ignoring legislative threats, continued to declare acts of that body unconstitutional while popular sentiment against the court reached a fever pitch.

When the legislature convened again, there were many proposals for reducing the power of the court. Some wanted the court to be divided into three units located in different parts of the state. Others advocated a new constitutional convention for the purpose of revising the constitution with the express purpose of subjecting the court to legislative authority. This later suggestion met with violent opposition and probably defeated the calling of a new constitutional convention at that time. The House proposed reducing the judges' salaries to twenty-five cents; the Senate even discussed abolition of the court. On December 9, 1824, the Senate did vote to abolish this court, while the House, a few weeks later, approved a drastic reorganization.[xix] The House proposal was adopted, as it required only a majority vote, and a new court, with only four judges was established. The aggregate salaries of the full court had been $4,500; those of the new were $8,000. The tug-of-war that ensued between the two courts became what historians have called the "Old Court-New Court Struggle," which lasted with unparalleled bitterness for two years. The new court assumed its official duties on December 12, 1825, but the bitterness continued. The clerk of the old court refused to yield its records, which had to be taken by smashing in the door of the courtroom. Advocates of the old court argued that the old court had been created by the Constitution (1792), not by the legislature, and therefore, could not be abolished by the legislature. On the other hand, the legislators maintained that they represented the will of the people and the courts should only adjudicate lawsuits rather than declaring laws enacted by the representatives of the people unconstitutional. While the new court was in session the old court continued to meet in a Frankfort church, as the meetings were held largely for the purpose of continuing the life of that court until after the August elections.[xx] The struggle between the two tribunals for recognition lasted until the new court advocates failed to capture control of the legislature of 1826. The immediate controversy was therefore settled in favor of the constitutional court, although, it has been proposed, this may have set the stage for the third constitutional convention.

The Court System Under the 1850 Constitution

The judicial article of the 1850 Constitution (Article IV) was far more restrictive than the provisions in the preceding two constitutions, although it again vested the judicial power of the Commonwealth "in one Supreme Court, (to be styled the Court of Appeals); and the courts established by this

Constitution." It also provided for such other inferior courts as might later be created by the General Assembly. The Supreme Court, although having appellate jurisdiction only, was given jurisdiction co-extensive with the state. It further provided that the judges, after serving staggered terms determined by lot following the first election, would be elected for terms of eight years. The court consisted of four judges, any three of whom could constitute the court for the transaction of business.

Follow the adoption of the new constitution, the General Assembly was made responsible for dividing "the state, by counties, in four districts as nearly equal in voting population (as possible)"; from each district qualified voters would elect one judge of the Court of Appeals. Circuit Courts were established in each county, although the General Assembly had power to change or alter their jurisdiction. Circuit judges were to be elected for terms of six years. Judicial districts were limited to sixteen until the population of the state should, "exceed one million, five hundred thousand" (Section 24, Article IV, third Constitution). County courts, which were established in each existing county, consisted of a presiding judge and two associate judges, although the latter positions could be abolished by the General Assembly whenever it should be deemed expedient. Each county's judges were elected for a term of four years, with their jurisdictions to be regulated by law. The General Assembly was authorized to divide each county into districts of convenient size, from which two Justices of the Peace would be elected for terms of four years, although their jurisdiction would be co-extensive with the county boundaries.

Judicial Innovation

The 1850 document not only gave the constitutional status to the Court of Appeals, the Circuit Courts, and the County Courts; but it also empowered the legislature to create any other courts it deemed necessary, as well as to define the details of organization and jurisdiction of all courts. Between that time and the adoption of the 1891 Constitution, the General Assembly made three major innovations, one at each level of the judiciary. Locally, it created a Court of Claims in each county. The functions of the court were primarily legislative and administrative, thereby making it the forerunner of present-day county Fiscal Courts. At the General Trial Court level, the state-wide concept was abandoned almost immediately following the adoption of the third constitutional document. This change was probably influenced both by the concept of Jacksonian Democracy as well as the recent bitterness of the "old court-new court struggle." Changing the method of selecting judges from executive appointment with life tenure to popular election for a limited term of years was a tribute to the popularity of Jacksonian principles of democracy. Therefore, the Circuit Judge, being elected and responsible only to the electorate of his district, made each Circuit, in effect, an autonomous court.

The General Assembly created an intermediate Court of Appeals thirty-two years after the abandonment of the centrally coordinated trial court arrangement. The purpose of this was to aid in expediting burdensome appellate caseload. Having so many cases tried by autonomous courts without any unifying influence from a central court system undoubtedly contributed to the increased number of appeals.

The Superior Court, having been severely criticized for failing to use its authority to certify important questions to the higher Court of Appeals, was abolished by the 1891 constitutional convention. Because of the prevailing sentiment a prohibition was placed in the 1891 Constitution against the creation of any court not established by that document. The result was the creation of an overlapping system, with the Court of Appeals as the highest court (consisting of the same number of judges as the combined membership of the Court of Appeals and the Superior Court under the 1850 Constitution), Circuit Courts, County Courts, Quarterly Courts and Magisterial Courts. In summary, the flexible language found in early judicial articles, while giving great power to the legislature, failed to provide guidance in exercising this potential. Conversely, the judicial article of the fourth Constitution, with its inflexible language, presented a strongly detailed plan with practically no legislative discretion to implement it or allow for changing social and economic circumstances.

The Constitution of 1891

The 1891 Constitution provided that "the judicial power of the Commonwealth, both as to matters and equity, shall be vested in the Senate when sitting at a Court of Impeachment, and one Supreme Court (to be styled in the Court of Appeals) and the courts established by this constitution" (Section 109). It further provided that after 1894, the Court of Appeals would consist of not less than five nor more than seven judges, each at least thirty-five years of age and practicing lawyers for eight years, who had resided at least five years in the state and two in the districts from which they should be elected. The most restrictive provision is found in Section 135, which states that "no courts, save those provided for in this constitution, shall be established."

A casual reading of the fourth Constitution might suggest that a unified and highly centralized court system had been established in Kentucky, but this is not the way it developed over the succeeding years. Lower courts were not directly subject to administrative supervision by the highest court although the latter could issue orders to inferior courts on certain matters. Nevertheless, in view of the rather inflexible language of the judicial article, each court operated largely as an unsupervised, autonomous body responsible only to its electorate constituents. More than a half a century later the General Assembly did provide for a Judicial Council as well as an annual conference to assist with the administration of the state judicial system. The Council consisted of the Chief Justice, four Circuit Judges, a Circuit Court Clerk appointed by the Chief Justices, three attorneys appointed by the governor, and the Chairman of the Judicial Committees of the House and the Senate. The Council was required to meet at least twice a year and could hold other meetings upon the call of the chairman. The Judicial Conference, consisting of the Judges, Commissioners of the Court of Appeals and all Circuit Judges within the Commonwealth, was required to meet at least once a year upon the call of the Chief Justice. The Council was charged with conducting a continuous survey and study of the judicial organizations, their operations, conditions of business practice, and procedures. The Council also made recommendations on desirable rule changes, procedures, methods of administration and other matters, and reported annually before November 1 to the Judicial Conference and to the Court of Appeals on the conditions of business within the judiciary. It was also required to report biennially to the General Assembly, not only upon the work of the various branches of the judicial system, but also to make recommendations for improvement in judicial administration, practice, and procedure.

The Judicial Conference was also directed by statute to conduct a continuous study of the judicial system and its administration and to take appropriate action on any reports and recommendations made by the Judicial Council. In 1960 the legislature created an administrative office of the courts to be held by a director and such other employees as the court might appoint.

This office, under the supervision and direction of the Court of Appeals, performed various administrative services for the court. It supervised its clerical and administrative personnel, and acted as a fiscal officer by preparing budget estimates, and collecting statistical and other data. It maintained the proper records on the assignment and disposition of matters submitted to the court, and was charged with carrying on a continuous survey of the organization, operation, condition of business practice and procedure of the state judicial system. The director also served as secretary of both the council and the conference.

The ultimate source of Judicial Power of the courts in Kentucky is the Constitution (1891). That document established the type and number of courts and conferred on these courts their power to hear and decide cases. On the other hand, the Constitution also empowered the legislature to enact laws that restrict and thus regulate the type of cases the courts may hear. However, when the legislature apportions jurisdiction among the several courts, all courts must be uniform throughout the state. Finally, all courts in Kentucky are courts of record, in that they meet by orders duly entered and signed in books for this purpose.

Changes in the Court System

Since the adoption of the current Constitution (of 1891), many changes have occurred in Kentucky. The population has almost doubled while the culture and economy have gradually expanded from a rural and agricultural base to a much more urban and industrial base. The number of trial level courts, including both the circuit and lower courts, was increased to handle the load, but adjudication labored under difficulties at the appellate level.

The 1891 Constitution did not permit the creation of more appellate courts or judgeships. Court dockets were filled, legal procedures were cumbersome, and final decisions were delayed in some instances for years.

Expansion in governmental regulation at the state level, development of many new areas of business, and various economic changes also greatly expanded litigation before the courts. Although efforts during the first half of the twentieth century to procure a new constitutional convention had failed, it did become evident that a restructuring of the judicial system was imperative. If it were to be accomplished, it would have to be through the cumbersome amendment process.

As early as 1956, a committee of the Kentucky Bar Association and an advisory committee of the Legislative Research Commission carefully studied the judicial system of Kentucky and recommended some rather sweeping changes in the form of a proposed amendment. These recommendations, in addition to calling for a Court of Appeals consisting of seven numbers, would have granted express authority to the General Assembly to provide for Commissioners of Appeal or Associate Appellate Justice to perform such duties as the court might designate. Also the Clerk of the Court of Appeals was to be appointed by the court rather than elected. It was recommended that Circuit Courts have a chief judge and such circuit court trial commissioners as the chief judge might appoint, with approval of the higher court, and that Circuit Courts have original jurisdiction over all cases not exclusively vested in some other court. Finally, it was recommended that the General Assembly could establish additional courts, provided that the Court of Appeals certified the need for those courts.[xxi] The committee proposals were not adopted, but a decade later the Constitution Revision Assembly recommended a sweeping change that the court system be divided into four levels: A Supreme Court, a

Court of Appeals (to be organized in divisions, thereby dividing the workload), Circuit Courts, and District Courts (generally one per county), which were to combine the work of the existing county and quarterly courts, the justice of peace courts and police courts. The recommended plan for choosing justices of the Supreme Court, the Court of Appeals and for the Circuit Courts would essentially be used under the Missouri plan and in a number of other states.[xxii] Although this plan was not adopted at that time, the proposals are quite similar to those submitted to the voters later in the Constitutional amendment that was adopted.

The 1975 Judicial Article

In the November 1975 election, Kentucky voters approved an amendment to the state Constitution for the purpose of re-structuring the entire judicial branch of government. Supporters of the proposed amendment contended that the new structure would meet current needs and was flexible enough to adjust to future requirements. (See Figure 5.)

As a result of this constitutional amendment and its implementing legislation, the judicial power of the Commonwealth is now exclusively held by the Court of Justice. This is a unified system for the purpose of court operation and administration, consisting of two appellate levels: the Supreme Court and the new intermediate Court of Appeals, and two trial levels, the Circuit Courts and the District Courts. Changes at the appellate level were made effective on January 1, 1976, while those at the trial level became effective January 2, 1978.

The Supreme Court

The adopted amendment repealed Sections 109 through 139, 141 and 143, and enacted entirely new provisions for a new constitutional judicial section. Section 110 specifies that the apex of the system is the Supreme Court, consisting of a Chief Justice and six additional Justices, which has appellate jurisdiction only, except that it has power to "issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause, or as may be required to exercise control of the court of justice." Appeals from a decision of a Circuit Court imposing a sentence of either death or life imprisonment or imprisonment for twenty years or more go directly to the Supreme Court. The former Court of Appeals districts became the initial Supreme Court districts, a condition that will remain until the General Assembly, with a certificate of necessity issued by the Supreme Court, finds redistricting necessary. Each district is represented by one Justice on the Supreme Court. This court selects one of its members to serve as Chief Justice for a term of four years. The Chief Justice is the executive head of the Court of Justice, with the power to appoint necessary administrative assistants. He may also assign, temporarily, any justice or judge of the Commonwealth to sit in any court other than the Supreme Court, when such assignments aid the proper disposition of cases. In addition, he is responsible for the budget of the Court of Justice and other necessary administrative functions of the court.

The Court of Appeals

Section 111 creates the Court of Appeals. It consisted initially of fourteen judges with an equal number selected from each Supreme Court district. Later, upon certification of necessity by the Supreme Court, the General Assembly may increase the number of Court of Appeals judges. The Court of Appeals has only appellate jurisdiction and it selects a member to serve as Chief Judge for a term of four years. The administrative authority and duties of the Chief Judge are prescribed by the Supreme Court. The Court of Appeals divides itself into panels of no less than three judges, with the Chief Judge making the assignment of the individuals to the panels. The Court of Appeals also prescribes the times and places in the state at which each panel shall sit to decide cases; determinations are by concurring vote of a majority of the judges. (See Figure 6.)

Circuit Courts

Section 112 provides that there shall be a Circuit Court held in each county and that all districts which existed on the effective date of the amendment shall continue under the name of "Judicial Circuits." The General Assembly has the power in the future, upon certification of necessity by the Supreme Court, to reduce, increase, or rearrange judicial circuits. The constitutional provision further states that a judicial circuit composed of more than one county shall be as compact in form as possible, and consist of contiguous counties, and that no county shall be divided in creating a judicial circuit. The number of circuit judges in each district existing on the effective date of the amendment did not change, but the legislature, upon certification of necessity by the Supreme Court, is empowered to make such changes. Judges in judicial circuits having two or more judges shall select biennially a Chief Judge, or, upon the failure to do so, the Supreme Court shall designate a Chief Judge. Chief Judges exercise the authority and perform such duties in the administration of their respective judicial circuits as may be prescribed by the Supreme Court, which also makes rules for the administration of judicial circuits by region it designates. A Circuit Court has original jurisdiction of all justifiable causes not vested in some other court, although it only has such appellate jurisdiction as may be authorized by law. (See Figure 7.)

Section 113 of the Constitution provides that a district court shall be held in each county, although the Circuit Court districts existing on the effective date of the amendment formed the basis of District Court districts, under the name of "Judicial District." Again, the General Assembly was given the power, upon proper certification of necessity by the Supreme Court, to reduce, increase, or rearrange districts. When the judicial district consists of more than one county, it is required to be as compact in form as possible and consist of contiguous counties. Dividing a county by creating a judicial district is prohibited. All judicial districts created by the amendment initially had at least one District Judge, who serves as Chief Judge. The General Assembly may determine that additional district judges are needed. Thereafter the number of district judges in each judicial district will be determined by the General Assembly only upon certification of necessity therefor by the Supreme Court. Counties in which no district judge resides have a Trial Commissioner, appointed by the Chief Judge. (See Figure 8.) This official must be a resident of the county and a qualified attorney if one is available. Upon certification by the Supreme Court, other trial commissioners, with like qualifications, may be appointed by the Chief Judge of any judicial district. These Commissioners have the power to perform such duties of the District Court as may be prescribed by the Supreme Court. The District Court is a court of limited jurisdiction. As of 1994, it has jurisdiction over misdemeanor violations, juvenile cases (unless the juvenile is tried in Circuit Court as a youthful offender), civil cases under $4,000 and probate matters and can exercise original jurisdiction only as may be authorized by the General Assembly.

Under Section 114, the Supreme Court and the Court of Appeals shall each appoint a Clerk to serve as they may determine. The Clerks of the Circuit Courts continue to be elected in the constitutional manner prescribed previously, but they will also serve as clerks of the District Court. Any court clerk may be removed from office by the Supreme Court for "good cause."

Circuit Court Clerks

The Kentucky Circuit Court Clerk, formerly considered an elective county official, has been assigned additional duties under the judicial article establishing the Court of Justice, and becomes a state employee with a new source of compensation. As the title implies, this official has been primarily responsible for the work of the circuit court, receiving and preserving documents of all actions coming before the court. In criminal case the circuit clerk maintains a daily record of the proceedings, records and indexes judgments of the court, collects fines imposed, compensates jurors for services and makes accounting of all these transactions. Additional duties have included such functions as filing petitions, contesting certain elections, and even being *ex officio* county law librarian.

An important duty since 1934, the effective date of the Kentucky Motor Vehicle Operations Act, has been serving as a local licensing agent for the State Tax Commission by accepting applications, issuing licenses and collecting fees in connection with the State Driver's License System. Effective January 1, 1978, the circuit clerk assumed the clerical duties of the new district court although retaining the previous responsibilities of the old circuit court, continuing to issue driver and boat licenses and performing many other miscellaneous duties.

With the district court assuming the judicial functions formerly assigned to the justice of the peace, the county, the quarterly, the juvenile, the police and probate courts, the circuit clerk's duties have expanded over a broad jurisdiction, including the following categories: (1) traffic violations, (2) felony preliminaries, (3) misdemeanors, (4) juvenile actions, (5) violations of city ordinances, (6) probate matters (7) civil cases under $4,000, and a small claims division for civil cases under $1,500. In general, under the new court system the circuit clerk continues to be elected but has responsibility for the clerical and administrative operations of district courts, and is removable for good cause by the Supreme Court. The clerical duties of the Small Claims division of this court have also been assigned to the circuit clerks. Their duties include the filing of claims and counter-claims, notifying defendants, taking affidavits, and collecting fees. In addition the clerk serving the district courts is charged with preparation of bonds given before that court, taking affidavits in the court and maintaining court dockets and records. Also, this official is responsible for the assessing of court costs, for their collection and making of various deposits, reports and payment of these monies, including fines and forfeitures, to the state Department of Finance. The statutes further state "every clerk shall perform such additional duties as may be prescribed by statute or by court rule" (KRS 30A.140).

On January 1, 1978, the effective date of the legislation relating to the implementation of the judicial article, the dependence of the circuit court on licensing fees to operate the office increased. Monies collected began to flow directly to the State Treasurer, with the circuit clerk being paid from the treasury, according to county population. The salaries of deputies and total expenses of the clerk's office also began to be paid from the state treasury (KRS 64.055). The Administrative Office of the Courts, in consultation with the clerk, determines the number, qualification and salaries of deputy clerks. This arrangement has the effect of Circuit Court Clerks becoming dependent on the Administrative Office of the Courts for all supplies and monies to meet the expense of their respective offices (KRS 30A.080).

Under the new constitutional provisions, justices of the Supreme Court and judges of the Court of Appeals, Circuit and District Courts are elected on a non-partisan basis, as may be provided by law. Justices of the Supreme Court, as well as judges of the Court of Appeals and Circuit courts, are selected for terms of eight years, while judges of the District court are elected for terms of four years. Another innovation of the new constitutional provisions pertains to filling of vacancies on the court. Section 113 established a Judicial Nominating Commission for the purpose of supplying the governor with nominees, from which he chooses one person to fill a vacancy in a judicial office. There is a commission for the Supreme Court and for the Court of Appeals, a commission for each judicial circuit, and a separate commission for each judicial district, if the District Court boundaries are different from those of the Circuit Court.

The Grand Jury

Kentucky law provides for a Grand Jury in each county to inquire into all law violations within the county and to bring indictments when it thinks there is a sufficient reason to try an alleged offender of felony charges. Criminal cases in the Circuit Courts are generally tried before, and with guilt being decided by, a petit jury of twelve members. Criminal cases in the district court may be tried to the six jurors. A defendant may plead guilty and waive jury trial, in which case the judge may hear the case and determine the penalty. In the former instance, the jury, instructed by the judges as to what the law is, finds the accused guilty or not guilty. If the verdict is guilty, the jury in a separate hearing in felony cases also fixes the punishment within the limits of the law. Conviction requires a unanimous verdict. If there is no unanimous verdict the jury is discharged and a new trial may be held. In many other states the jury has the responsibility only of finding the accused guilty or not guilty, while the presiding judge fixes the judgment.

As few as nine are sufficient to give a verdict. Civil cases by district courts may be by six jurors, in which case agreement of five is necessary to render a verdict.

Other Court Functions

An important change of procedure in the new system is found in the creation by Section 121 of the Retirement and Removal Commission, composed of six members, including one Judge of the Court of Appeals, one Circuit Judge and one District Judge, each chosen by their respective courts, plus one member of the Bar Association chosen by that professional group, and two individuals appointed by the Governor of the Commonwealth. This commission, upon proper required notice and hearing, may retire for disability, suspend without pay, or remove with good cause, any judge or justice. Previously, the only way a judge could be removed was by the process of impeachment. A judge may still be impeached by the General Assembly. Because of its complexity and difficulty, impeachment is rarely used.

Both the Supreme Court and the Court of Appeals now appoint clerks who are responsible for maintaining accurate and efficient records of the court's proceedings.[xxiii] The clerk's office must keep track of each appeal as it is filed and record each action until final disposition. The clerk is also responsible for collecting costs on each case filed with his office. The Clerk of the Supreme Court, the court of the last resort in the state, issues certificates of good standing and provides a license to all attorneys, provides applications to and collects required fees from persons desiring to take the state bar examination, and administers the constitutional oath of office to newly admitted attorneys and to other state officials.

One of the innovations is the creation of a Small Claims Division of the District Court, which as of 1994, can handle litigation involving values up to $1,500 in a relatively informal manner. The purpose of this change is to make the courts available to persons having small claims and to reduce court costs and attorney's fees, which in the past frequently amounted to more than the claim involved. Under the new system small claims matters may be filed on a form supplied by a court, with a nominal filing fee of fifteen dollars ($15). The services of an attorney are not necessary, as the individual may present his own case.

The appointment of Trial Commissioners in counties in which no District Judge resides will enable those counties to have a local, qualified attorney conducting the court and lightening the workload of District Judges who serve more than one county. It should be pointed out, however, that this is considered a part-time official position and a commissioner may also continue in the private practice of law. The Trial Commissioner's duties, as defined by the Supreme Court, are very limited. They include holding examination trials; setting bail; accepting pleas of guilty, and imposing a sentence for any offense punishable only by a fine of one hundred dollars or less; conducting preliminary inquiries and ordering temporary custody in juvenile cases;

probating wills, and appointing executors and administrators. Trial Commissioners' salaries, as of 1994, are limited to $600 per month where there is no District Judge and $400 per month where there is a District Judge. These officials are appointed by and serve at the pleasure of the Chief District Judge. Additional Trial Commissioners may be appointed by the Chief District Judge of any district if the necessity for such appointment is certified by the Supreme Court.

As of 1994, the Judicial Budget specifies compensation of the judiciary as follows: District Judges receive $60,400 per year; Circuit Judges receive $76,900; Judges of the Court of Appeals receive $80,300, except for the Chief Judge, whose salary is $83,300; the seven justices of the Supreme Court, final arbiters of state law, receive $83,750 per year, except for the Chief Justice, whose salary is $88,750.

CHAPTER IX

INTERGOVERNMENTAL RELATIONS

"Intergovernmental relations" is the term applied to the relationship between one unit of government (such as a state or a city) and others. It is generally used to refer to relationships among governmental units within a nation, in contrast to "international relations" among nation-states. For our purposes, "intergovernmental relations" means the relationships among the U.S. national government, state governments (and particularly Kentucky's state government), and cities, counties, and other units of local government within each state. The relationship described may be vertical (between "layers" of government, e.g. "federal-state," or "state-local" relations) or horizontal (among governments of the same level, that is, "interstate" or "interlocal" relations).

Constitutional Structure of Intergovernmental Relations

The fundamental legal structure of intergovernmental relations in the United State of America is established by the United States (or "federal") Constitution and the constitution of each of the fifty states. The U. S. Constitution defines the legal relationship between the national and state governments and among the governments of the fifty states. Each state's constitution provides the legal framework for state-local relations within that particular state.

United States Constitution

The Constitution of the United States, ratified in 1789, establishes a federal system of government. Such a system distributes political power between the central, or national, government, and self-governing states. It is a system of shared power.

The framers of the U.S. Constitution believed that a few well-defined powers should be delegated to the national government, with more numerous and indefinite powers reserved for the state governments. The Tenth Amendment to the U.S. Constitution, a part of the Bill of Rights adopted in 1791, expressly states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people." Article I, Section 10 lists powers denied to the states by the national Constitution. Among them is a provision that "[n]o state shall, without the consent of the Congress, . . . enter into any agreement or compact with another state."

The federal Constitution makes the national government supreme in those areas in which power is delegated to it. Article VI, Section 2 says, "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges of every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Article I, Section 8 of the federal Constitution enumerates the various powers of the federal legislative, or law-making, body, the U.S. Congress. Two of it's enumerated powers which have a major impact on federal-state relations include the powers "to regulate commerce . . . among the several states" and "to make all laws which shall be necessary and proper for carrying [the federal government's powers] into execution." International relations and national defense are other major policy areas assigned to the federal government. Section 9 contains a list of powers denied to the Congress.

Some of the amendments to the Constitution further limit or expand the power of the states and the national government. Examples are Amendments XIII, XIV, and XV, adopted after the Civil War, abolishing slavery and establishing voting rights and the principles of due process and equal protection of the laws for all citizens; Amendment XVI, empowering Congress to establish an income tax; Amendment XIX, prohibiting the denial of voting rights on the basis of sex; and Amendment XXVI, guaranteeing voting rights to persons eighteen years of age or older.

Under a federal system, it is inevitable that conflicts and disagreements arise between federal and state authorities. The framers of the Constitution made the Supreme Court of the United States the arbiter in such matters by giving it the ultimate responsibility for the interpretation of the U.S. Constitution. Article III of the Constitution also gives the Supreme Court the power to decide controversies between two or more states.

States are given a role in the process of amending the U.S. Constitution. Article V provides that Congress shall call a national convention to amend the Constitution when requested by the legislatures of two-thirds of the states. Proposed amendments to the Constitution become valid when ratified by three-fourths of the state legislatures or by conventions in three-fourths of the states.

The State Constitution

While the constitutional relationship between the national and state governments is one of shared power, "[l]ocal governments are, constitutionally speaking, mere conveniences of the state. They are created by state government, their institutional structures are defined by state government, and their powers of legislation and taxation are derived from state government. As such, local governments do not enjoy sovereignty, apart from that granted by the state. Thus, this relationship is unitary rather than federal, since it is not concluded between [xxiv]independent sovereigns."[xxv]

As discussed more fully in Chapter X and XI, the constitutional framework for state and local relations in Kentucky has evolved from a system in which the General Assembly of the 1800's passed many special and local laws governing individual cities and counties, to the current constitution's prohibition against special and local legislation and its requirement that state legislation govern cities by classes, or groups, based on their population. In addition, the General Assembly enacted laws in the 1970's and 1980's that granted broader, "home rule" (or self-government) powers to cities and counties . In November, 1994, voters will consider a constitutional amendment providing a clearer constitutional basis for city and county "home rule," and permitting state legislation to govern groups of cities based on factors besides their population.

The Dynamics of Intergovernmental Relations

Thus far, we have described the intergovernmental system in the United States as though it were composed of different layers or boxes that only relate to one another under established, rarely changing, constitutional rules. This formal view ignores the dynamics of the actual, day-to-day relationships among the national, state and local governments in the United States. The intergovernmental system is a constantly developing pattern of cooperation and conflict among units of government, their officials, and their citizens. The elements of the system do not always gather in neat, clearly separated "layers" of government but, as Martin Grodzins has noted, frequently interact in ways that more closely resemble a "marble cake" of shared roles and responsibilities.[xxvi]

Conflict and Cooperation: The Politics of Intergovernmental Relations

The foundation document of the United States, its Constitution, is a product of conflict, compromise, and cooperation among proponents of a strong federal government and those favoring strong, independent states. The politics of intergovernmental relations have continued to be characterized by conflict and cooperation among national, state, and local governments, as illustrated in the development of fiscal federalism and the current issues of federal-state and state-local preemption, regulation, and mandates.

Fiscal Federalism

The post-Civil War history of federal-state-local fiscal relations began with important, but relatively modest, federal programs of aid for specific state and locally operated public services prior to the Great Depression of the 1930's and World War II. As early as 1862, under the Morrill Act, the federal government provided states with grants of land for the purpose of establishing agricultural and mechanical colleges, including the institution that became the University of Kentucky.[xxvii] Beginning in 1916, programs of federal aid for highway construction led to the development of a nationwide system of primary roads, including a Kentucky primary system of about 12,000 miles in use by 1950.[xxviii] The depression and two world wars had a major impact on fiscal federalism, both in the total amount of spending by governments and in the relationship between federal and state budgets. Between 1913 and 1948, expenditures by all governments in the United States increased from $3 billion to $70 billion. "At the beginning of the period, the national budget was less than half as large as the combined state and local budgets; at the end it was six times larger."[xxix]

The growth and institution of major federal grants-in-aid and entitlement programs administered through states and localities characterized the 1950's and 1960's, with the greatest growth in the mid to late 1960's. In 1956, the federal-aid highway act funded the interstate highway system, a program in which the federal government provided ninety-percent of the cost of a major system of state-constructed, transcontinental roads. While the funding of the interstate system represented a major new federal investment, the enabling legislation justified the federal role in traditional, constitutional terms. The official name of the interstate program was the "National System of Interstate and Defense Highways," which Congress declared "of primary importance to the national defense."[xxx]

Beginning in 1965, during the administration of President Lyndon Johnson, a significant increase in federal grants-in-aid to states and local governments included introduction of federal health, housing assistance, and urban redevelopment programs.

> "In just two years, . . . Congress increased the number of separate grant-in-aid authorizations from 221 to 379 . . . Although federal grants-in-aid were a well-established feature of the U.S. government, they had historically been confined to a few specific areas. As late as 1965 the two major functional categories receiving assistance, transportation (highways) and income security (public assistance), together accounted for about two-thirds of all federal aid dollars. By 1969, the proportion of federal aid dollars assigned to highways and public assistance had . . . decreased to one-third of a much-expanded aid package."[xxxi]

These narrow-purpose, or "categorical," methods of financing public programs provided states and communities with the economic resources to improve the economic prosperity, health, and welfare of many Americans. However, they were criticized for being too restrictive to permit policy innovations suited to local needs and preferences, and for a lack of policy coordination among different federal grant-administering agencies and their state counterparts.

The 1970's saw the introduction of federal revenue-sharing with state and local governments, a program that tied federal funds to broader federal policy goals and reduced the much-criticized "red-tape" associated with the narrow-purpose grant and entitlement programs. Federal block grants, which group interrelated, narrow-purpose grant programs into more closely coordinated packages, were a related development of the late 1960's that increased under the Nixon and Ford presidencies. However, a growing federal deficit led to the end of federal revenue-sharing in the early 1980's.

During the 1980's and early 1990's, fiscal federalism has been characterized by the demise of federal revenue-sharing and a continuation of both categorical and block grants. A steady decline in federal grant funding from 1978 to 1990 reversed slightly in the early 1990's, due in part to trends in Medicaid.[xxxii] State and local governments complain of an increasing use of unfunded federal mandates, through which national policies are imposed on states and localities without the funding needed to implement them. Local governments cite unfunded state mandates as an additional fiscal burden on cities and counties.

Preemption, Regulation, and Mandates

The 1960's and early 1970's witnessed an increasing federal role in what traditionally had been state and local policy domains through the growth in federal funding for a broad range of public programs. Federal grants, and even federal revenue-sharing, came with national policy "strings" attached to federal dollars. Some categorical grant-in-aid requirements were very specific, concerning, for example, the composition of advisory or governing boards established to administer the federally-assisted program. The Congress also furthered broad national goals, such as civil rights, in its categorical and general fiscal aid programs.

The 1960's and 1970's have also been characterized as the era of the initiation of "regulatory federalism," in which federal policies were applied to states and localities without the incentive of federal funds: "For the first time in the nation's history, federal mandates and regulations began to rival grants and subsidies in importance as federal tools for influencing the behavior of state and local governments."[xxxiii] The trend in federal regulation has continued into the 1990's, fostered in part by the United States Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority*.[xxxiv] In that decision, Justice Blackmun, writing for a sharply-divided Court, suggested that states would have to rely on the political process, rather than constitutional law, to limit federal interference with state functions.[xxxv]

Unfunded federal mandates and regulations are examples of the growing exercise of federal preemption, "the authority of federal law to displace or replace state (and local) law under the supremacy clause of the U.S. Constitution (Article VI)."[xxxvi] In 1992, the Advisory Commission on Intergovernmental Relations identified 439 "significant" federal preemption statutes enacted since 1789. Congress had passed 53 percent of those laws since 1969.[xxxvii] Preemption also takes the form of regulations issued by federal executive branch agencies in the process of implementing laws enacted by the Congress.

Specific examples of preemptive enactments listed by the ACIR include the Voting Rights Act of 1965, the Occupational Safety and Health Act of 1970, the Low-Level Radioactive Waste Policy Act of 1980, and the Americans with Disabilities Act of 1990. Many preemptive laws further widely-valued national policies. In such circumstances, the intergovernmental issue is not whether they should be implemented, but who should pay the cost of their implementation.

In response to state and local reactions to preemption, the federal government has undertaken efforts, or considered proposals, to account for and reduce the burdens of its regulations and mandates. None of the efforts to date has resolved the issue, and Congress continues to debate legislation to forge a compromise between the states' demand for an end to unfunded or underfunded federal mandates and at least equally strong demands to promote valued national policies in the face of a growing federal budget deficit. A Federal Mandate Accountability and Reform Act of 1994 (S.993) and a similar bill in the House of Representatives were pending before the Congress when it adjourned in 1994.

Cities and counties, in Kentucky and elsewhere, also complain of state preemption, regulation and mandates affecting local governments. In 19 , the Kentucky General Assembly passed a law requiring preparation of information on the fiscal impact of state legislation on local governments. In 1994, the General Assembly considered, but did not pass, a bill to relieve local governments from complying with future state statutory mandates that cost money to implement and for which no source of funding is provided. As of 1990, mandate funding and relief measures had been enacted by statute or constitutional provision in sixteen states.[xxxviii]

Mechanisms for Intergovernmental Cooperation and Conflict Resolution

Methods of resolving intergovernmental conflicts and engaging in cooperative efforts range from informal, day-to-day working relationships among officials of different governments, through formal organizations that serve as forums for non-binding resolution of issues, to legally-binding laws and interstate compacts.

State and local governments and officials have formed various associations to further their common interests within the federal system and to identify and develop responses to shared public policy issues. In addition, federal, state, and local government officials and employees engage in formal and informal efforts to further their common public policy interests and to resolve the conflicts inherent in the federal system.

General purpose associations of state and local officials include the Conference of Chief Justices, The Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), the National Governors' Association (NGA), the National Association of Counties (NACO), and the National League of Cities (NLC). Kentucky officials are active in each of these associations, one of which, The Council of State Governments, is headquartered in Lexington. While their roles and interests in the federal system may vary, they typically develop positions on federal policy issues affecting their jurisdictions and maintain a Washington, DC office to promote those positions. More specialized associations of state and local officials, including, for example, correctional administrators, mental health program directors, and transportation officials, maintain regular contact with one another and their administrative counterparts in the federal government to promote common policy interests and resolve conflicts relating to the programs they jointly administer.

State governments also cooperate through the NGA, CSG, NCSL, and other joint organizations, such as the National Conference of Commissioners on Uniform State Laws (NCCUSL), to share public policy innovations with one another. The NCCUSL, composed of delegates from each state, develops proposed uniform laws for the states' consideration in areas in which a single approach by all states is advisable. The Council of State Governments' Committee on Suggested State Legislation annually compiles and publishes a volume of draft laws on various topics of current interest to the states. The National Conference of State Legislatures' Assembly on State Issues provides state legislators and their staffs a forum for discussions of common policy issues, such as services for children and families, education, and health care. Both CSG and NCSL, which are supported in part by state contributions, provide on-going, policy research services to the states. As Kentucky's commission on interstate cooperation, the Legislative Research Commission works with CSG, NCSL, and the NCCUSL.

The U.S. Advisory Commission on Intergovernmental Relations, and the state intergovernmental commissions patterned after the ACIR, are on-going, formal organizations that serve as forums for non-binding resolution of intergovernmental conflicts. Formed in 1959 by an act of Congress, the national ACIR includes representation from the federal, state, and local governments and private citizens. The organization continuously evaluates and makes recommendations to improve the performance of the U.S. federal system. As of 1990, there were twenty-six state organizations similar to the ACIR, but established to deal with state-local relations.[xxxix]

An older, and more binding, method of interstate cooperation is the formation of interstate compacts. "An interstate compact is a legal instrument with two basic characteristics. When enacted by a state, the compact becomes a statute and also a contract between the party states."[xl] Article I, Section 10 of the U.S. Constitution recognizes the compact device and seems to require congressional approval of all interstate compacts: It states that, "No state shall, without the consent of the Congress, . . . enter into any agreement or compact with another state . . ." However, "the United State Supreme Court held in 1893 in *Virginia v. Tennessee*, 148 U.S. 503, that only agreements that affect the political balance within the federal system or that affect a power delegated to the national government must receive congressional consent."[xli] Examples of the interstate compacts that have been enacted by Kentucky are the Interstate Compact on the Placement of Children, which regulates the placing of children across state lines in foster care or institutional care for delinquents (KRS 615.030), and the Interstate Compact on Air Pollution, which addresses an environmental problem that transcends state boundaries (KRS 224.18-200).

Interstate agreements are one way of dealing with competition and conflict among the states within the United States. Two contemporary examples of interstate competition and conflict are states' competing efforts to recruit industry and their conflict over the siting of hazardous waste disposal facilities. Through tax and non-tax incentives , a state's economic development activities are often directed to attracting new industries or enticing existing industries to relocate, a policy that has resulted in "bidding wars" among the states. Kentucky has been both emulated and criticized for its incentive legislation.[xlii] In an interstate version of the common "not-in-my-backyard" reaction to the siting of needed, but unpopular, public projects such as sanitary landfills, the federal and state governments have recently struggled with the siting of disposal sites for low-level radioactive waste. Regional interstate compacts have been a key ingredient in efforts to resolve the issue.[xliii]

Legal Structure of State-Local Relations in Kentucky

The Kentucky Department of Local Government and the fifteen Area Development Districts (ADD's), established by state statute in 1971, are the general-purpose organizations linking state and local government in Kentucky. In addition, the Finance and Administration Cabinet monitors local government debt and the state Auditor of Public Accounts is authorized to audit local governments and governmental officials. Special-purpose agencies, such as the state Department of Education, the State Board of Elections, and the Revenue Cabinet, assist and oversee local performance of state-local public functions, such as implementation of the Kentucky Education Reform Act of 1990 (KERA), the administration of national, state, and local elections, and the valuation of private property for purposes of taxation.

The state statutory framework for cooperation among local governments in Kentucky is formalized in the ADD's (KRS 147A.050 to 147A.140), the Interlocal Cooperation Act of 1962 (KRS 65.210 to 65.300), and statutory authorization for cities and counties to jointly establish "special districts" for particular public purposes (KRS 65.005 to 65.176). Just as cooperation among officials of different states also takes place through informal contacts and interstate organizations like NCSL, Kentucky local governments and their officials have formed associations to further their common interests, including the Kentucky League of Cities (KLC) and Kentucky Association of Counties (KACO).

The Global Dimension of Intergovernmental Relations

This chapter began with the traditional definition of intergovernmental relations as relationships among units of government within a single nation.

The focus of this book is state government; and the Constitution of the United States assigns to the national government the basic powers of international relations, such as the power to regulate commerce with other nations, the authority to make treaties with foreign countries, and the power to declare war. Many of the powers that Section 10 of the Constitution expressly denies to the state governments have to do with international relations.

The traditional non-involvement of state governments in the international arena is, however, giving way to the realities of contemporary economic and political developments. "State and local governments are being propelled into the novel role of developing policies for dealing with foreign entities" as they wrestle with the globalization of economic development and investment and find themselves serving as laboratories for governmental changes in other nations.[xliv]

Both the executive and legislative branches of Kentucky state government are actively involved in the global redefinition of intergovernmental relations. For example, Kentucky's Economic Development Cabinet includes a Coal Marketing and Export Council and operates offices in Japan and Belgium to promote the export of Kentucky products to other nations and to encourage foreign investment in Kentucky. As of 1991, 42 of the states maintained similar offices abroad.[xlv] Through their own international programs and cooperative efforts of organizations such as the National Conference of State Legislatures, Kentucky's General Assembly and the legislatures of other states are providing technical assistance to new and established legislatures throughout the world. The Kentucky Legislative Research Commission has established an Office for Federal and International Relations to promote and focus the General Assembly's contacts with other nations.

Bibliography

Constitutional Structure of Intergovernmental Relations

Morison, Samuel Eliot, The Oxford History of the American People (New York: Oxford University Press, 1965).

"The Constitution of the United States of America" and "Constitution of Kentucky," Kentucky Revised Statutes, Volume 1 (Charlottesville, Virginia: The Michie Co., 1992).

Campbell, Kathy, "Local Government and the Kentucky Constitution," Chapter IX in A Citizens' Guide to the Kentucky Constitution, Research Report No. 137 (Frankfort, Kentucky: Legislative Research Commission, 1989), pp. 91 - 107.

The Dynamics of Intergovernmental Relations

Advisory Commission on Intergovernmental Relations [ACIR], Significant Features of Fiscal Federalism, 1993, 2 Volumes (Washington, DC: ACIR, September, 1993).

ACIR, Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues (Washington, DC: ACIR, September, 1992).

ACIR, Federal Regulation of State and Local Governments: The Mixed Record of the 1980's (Washington, DC: ACIR, July, 1993).

ACIR, Local Government Autonomy: Needs for State Constitutional, Statutory, and Judicial Clarification (Washington DC: ACIR, October, 1993).

ACIR, State-Local Relations Organizations: The ACIR Counterparts (Washington, DC: ACIR, February, 1991).

Brown, Lawrence; Fossett, James W.; and Palmer, Kenneth T., The Changing Politics of Federal Grants (Washington, DC: The Brookings Institution, 1984).

The Council of State Governments, The Book of the States, 1994-95 Edition (Lexington, KY: The Council of State Governments, 1994).

Elazar, Daniel, American Federalism: The View from the States (New York: Thomas Y. Crowell Co., 1966).

Grodzins, Martin, The American System: A New View of Government in the United States, edited by Daniel Elazar (Chicago: Rand McNally and Co., 1966).

Hanson, Russell L., "The Intergovernmental Setting of State Politics," Chapter 2 in Gray, Virginia; Jacob, Herbert; and Vine, Kenneth, Politics in the American States: A Comparative Analysis, Fourth Edition (Boston: Little, Brown and Co.: 1983), pp. 27 - 56.

Smith, Donna K., Interstate Cooperation: Kentucky and the Compact, Informational Bulletin No. 64 (Frankfort, KY: Legislative Research Commission, 1968).

Swartz, Thomas R. and Peck, John E., editors, The Changing Face of Fiscal Federalism (Armont, NY: M. E. Sharpe, Inc., 1990).

Van Horn, Carl E., Policy Implementation in the Federal System (Lexington, MA: D. C. Heath and Company, 1979).

Wright, Deil S., Understanding Intergovernmental Relations, Second Edition (Monterey, CA: Brooks/Cole Publishing Co., 1982).

The Global Dimension of Intergovernmental Relations

The Council of State Governments, "States in the International Arena," Journal of State Government, Vol. 64, No. 4, October - December, 1991.

CHAPTER X

LOCAL GOVERNMENT: COUNTIES

Before the American Revolutionary War, what is now the Commonwealth of Kentucky (with the exception of the Jackson Purchase area), was part of Fincastle County, Virginia. It was basically a backwoods area with no incorporated towns or other local governments within its entire boundary. In 1776 Fincastle County was divided into three counties, namely Fayette, Jefferson and Lincoln, thereby constituting the original district of Kentucky.

Virginia, perhaps more than any of the other original colonies, relied upon counties as the basic unit of government. The state government delegated to the county the primary responsibilities of tax assessment and collection, law enforcement, and many other functions of local government. It also gave this western district a "degree of autonomy when it set up a special land court, a district court of appeals and a county militia system."[60] During this formative period "the county organization was the local unit of government and political institution in Kentucky."[61] Virginia thereby established a loose political pattern that still prevails.

Following a series of acts by the General Assembly of Virginia, beginning in 1784, the three original counties were further subdivided into nine counties that made up the state of Kentucky at the time of its admission into the Union on June 1, 1792. As one historian points out, Kentucky very early "displayed a particular predilection for the art of county-making."[62] This talent was further demonstrated by the state legislature's increasing the number of counties to forty-three during the next eight years. By the time of the 1850 Constitution, Kentucky counties totaled one hundred. When the fourth Constitutional Convention convened in 1890 there were one hundred and nineteen. Only one has been added since that date, namely McCreary County, which was created in 1912.

The U.S. census of 1790 listed only five Kentucky towns: Lexington (with a population of 834), Washington (462), Bardstown (216), Louisville (200), and Danville (150).[63] The earliest Kentucky towns had been incorporated by special acts of the Virginia Legislature. The first of these was Boonesborough, created in 1799. The second was Louisville, created in 1780. Having inherited this practice of special act incorporation from Virginia, Kentucky, in its first three constitutions, continued to provide for incorporating cities through special legislative acts, with each charter and charter amendment requiring special legislation.

The first three Kentucky Constitutions contained practically no provisions relating to cities. Actually the first one made no mention whatsoever of cities and towns; the 1850 Constitution was the first to make any reference to "city" or "municipality." It was also notable that until the Constitutional Convention of 1849-50 convened, none of the previous conventions included any delegates representing cities or towns, as all such positions were apportioned for counties. At the convention drafting the third Constitution, two provisions were made for delegates from the city of Louisville. Even that document had very few provisions relating to municipal government, although it did abolish the gubernatorial appointment of local officers and provided instead for a system of popular election. This exclusion of provisions relating to cities vividly points out the significant role counties played in the early political development of the state.

Limited Powers of County Government

In a democracy, every level of government, indirectly at least, derives its powers from the people. The popular grant of power to a national government is usually in the form of a constitution. However, the basic grants of power and authority to local units of government have been held by the courts to be contained in state laws, whether they be constitutional or statutory. This doctrine generally applies even in the case of local governments operating under so-called "home-rule" charters. The premise, that cities and municipalities are, in effect, creatures of the state, holds in Kentucky, as it does in the other states in the federal system. In other words, local governments have only delegated powers, regardless of the source of their authority or nature of their charter. They exist and act only on authority delegated by the state. Under this doctrine, generally referred to as "Dillon's Rule," such delegations or grants of municipal power are given a very strict and narrow interpretation.

According to Dillon:

> It is a general and undisputed propositional law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in *express* words; second, those *necessarily or fairly implied* in or *incident* to the powers that are expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but *indispensable.* Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.[64]

Although the "Dillon Rule" applied only to municipal corporations, the same or similar rules of strict construction have been applied to other types of local governments in Kentucky and many other states. The Kentucky Court of Appeals has long followed the concept of restrictive interpretation of municipal powers, with applications to both cities and to special districts in the state. Actually, the application of the rule in Kentucky with respect to county powers may be said to be even more restrictive than its application to cities; certainly it is far more restrictive than the provisions which governed county powers under the first three constitutions. An example of this restrictiveness is evidenced by the following statement:

> The rule universally applicable to and circumscribing the power and authority of fiscal courts and other governing authorities of counties is that they can exercise no power or authority which is not expressly conferred upon them by the Constitution or a statute, and such implied powers as are *imperatively necessary* to execute those so expressly conferred. (C*rick v. Rash, 1921, 190 Ky. 820, 229 S.W. 63, p. 65.*)

Traditionally, counties in Kentucky have served as subordinate political divisions or as administrative subdivisions of the state. The basic structure of county government is established in the current Kentucky Constitution. Despite the great differences in size, in local conditions, in the needs and the services performed, each of Kentucky's one hundred and twenty counties, with the exception of Fayette, is governed under an essentially uniform organizational structure.

The Constitution contains a long list of county offices to be filled by elections and specifies their terms. The outlining of powers, functions, duties and compensation of individual county officials, however, has been left largely to the General Assembly. The same applies to the powers of the fiscal courts.[65]

Governmental Structure of Kentucky Counties

The Fiscal Court

Under Kentucky's 1891 Constitution, the fiscal court is established as the governing agency of the county. Under the guidance of the county judge/executive, it constitutes the chief administrative and policy-determining body for the conduct of county governmental activities. In those policy areas enumerated by the legislature in the statutes, it may enact ordinances and issue regulations having the force of law within the county [KRS 67.083(3)]. All counties in Kentucky, even those with an urban-county form of government, must have a fiscal court, which may consist of the county judge/executive and magistrates elected from districts or three commissioners-at-large from the county.

In 1972, the regular session of the General Assembly enacted legislation, referred to as the "Home Rule" Act, which conferred extraordinarily broad legislative powers to fiscal courts in matters regarded only as administrative in nature. This legislation was declared unconstitutional in *Fiscal Court of Jefferson County v. City of Louisville*, et al, 559 S.W. (2d) 478 (Ky. 1977). The Supreme Court in that case noted that "the General Assembly must grant governmental power to fiscal courts 'with the precision of a rifle shot and not with the casualness of a shotgun blast.'"[66] The General Assembly revised the statute in the 1978 session to conform to the requirements of the Supreme Court by specifically listing those policy areas in which the fiscal court could enact ordinances or issue regulations (KRS 67.083 and 67.0841).

Historically, the form of the fiscal court established by the 1891 Constitution marked a departure from the established practice, since the governmental affairs of counties were previously conducted by the traditional county court. That Constitution also authorized the General Assembly to provide by law that justices of the peace in each county would sit as a court of claims and assist the county judge in determining the county tax levy and making appropriations.

There was considerable sentiment among the delegates to the 1890 Constitutional Convention for establishing a commission form of government for all counties in the state. A compromise was reached and a provision adopted that the office of justice of peace would be continued and that there must be at least three and not more than eight in a county, with the county judge as *ex officio* presiding officer of the fiscal court. Section 144 of the Constitution permits the counties to choose either the commission or magisterial form of local government. Prior to the adoption of the Judicial Article in 1975, members of a fiscal court composed of justices of the peace performed their traditional function as judicial officers as well as administrative and legislative duties, whereas commissioners were elected solely for administrative and legislative service on the fiscal court. In counties operating under the commission form, justices of the peace were still elected but retained only their judicial functions. After the adoption of the Judicial Article and the creation of the District Courts, the office of justice of the peace in a county operating under the commission form became vestigial. The only function left for justices of the peace was the performance of weddings, and then only under the authorization of the county judge/executive or the Governor. Some counties no longer elect justices of the peace, and the Attorney General has advised in OAG 93-40 that when a county has adopted the commission form of fiscal court, the justices' districts shall have the same boundaries as the commissioners' districts, and thereby be limited to three in number.

Approval of the voters in the county is required to change from a magisterial or a justice of peace form of county government to the commission form (KRS 67.050). The commission form of government has been adopted in fourteen counties, including Fayette, which had changed to the metro form described later: Bath, Boone, Boyd, Campbell, Daviess, Greenup, Jefferson, Johnson, Kenton, McCracken, Mason, Montgomery and Scott.

The County Judge/Executive

The county judge/executive (formerly the county judge), as *ex officio* chairman of the fiscal court, is the chief executive officer of the county and exercises administrative control over the activities of all agencies created by that body, although the fiscal affairs of the county are subject to approval by the fiscal court as a whole. The county judge/executive is also responsible for the preparation of the annual budget of the county. It is the county judge/executive's duty to present the budget to the fiscal court (KRS 68.240). The fiscal court *may* amend the budget before it is sent to the state local finance officer (KRS 68.250).

The Kentucky Revised Statutes assign many other duties to the county judge/executive, including a variety of appointive powers. For example, he or an appointee serves as county alcoholic beverage administrator in those counties which have such an office (KRS 241.100). Actually, he appoints, usually with approval of the fiscal court, virtually all non-elective administrative officers to the county and members of numerous statutory county boards and commissions, plus the county representatives on any joint city-county commissions (KRS 67.710).

The statutes also direct that the county judge/executive be a member of various boards and commissions. Prior to the adoption of the judicial amendment in 1975, the county judge, although not required to be an attorney, presided over the county court and quarterly courts in a judicial capacity.[67]

Eight other county officers are provided for by Section 99 of the Kentucky Constitution: county court clerk, county attorney, sheriff, jailer, coroner, surveyor, assessor, and constable (one for each magistrate's district in the county).

With the exception of surveyors, tax assessors, and jailers, all these officers are found in every one of Kentucky's 120 counties. The office of tax assessor was abolished (as permitted by Section 104 of the Constitution) and replaced first by the office of tax commissioner, then by the office of property valuation administrator. In the counties of Jefferson and Fayette, under legislation permitted by Section 105 of the Constitution, the office of jailer has been abolished and its duties assumed by the sheriff.

County Clerk

As a result of the Judicial Article, the county clerk no longer has any judicial responsibilities. The Judicial Article did not lessen the importance of the office; however, the county clerk is still responsible for recording and keeping permanent county records of various legal instruments (including deeds, mortgages, leases, liens and settlements of estate). KRS 67.120 provides that the county clerk may, at his option, act as clerk of the fiscal court in any county but Jefferson. Prior to 1979 this function was a requirement in all counties except Jefferson. In this capacity as clerk of the fiscal court, the clerk must attend all sessions of court and keep a complete record, properly indexed, of its proceedings.[68]

The county clerk also prepares the county tax bills for both real estate and personal property; issues hunting, fishing, and occupational licenses; sells automobile and other vehicle licenses required by state law; and issues marriage licenses and maintains records of all such licenses issued in the county. His office is also responsible for the registration of voters (except in Louisville, which has a city board of registration commissioners), and he acts as secretary of the county board of registration and purgation.

County clerks also have various duties relating to the conduct of both primary and regular elections, including the custody and maintenance of voting machines, the preparation of credentials for election officers, the providing of staff assistance for the election commission, and the receipt and processing of absentee ballots. In fact, county clerks have many other statutory duties, far too numerous to mention, that do not fit into any of the above categories.

County Attorney

Another important elective county official is the County Attorney. This officer, in addition to aiding the Commonwealth's Attorney in the criminal courts, serving as prosecutor in district court, and handling cases of child support under the Uniform Support of Dependents Act (KRS 407.190), is also the legal advisor for the fiscal court and is to be in attendance at that agency's sessions. He also serves as legal counsel and advisor for all county officials and handles all suits against or on behalf of county officials involving the official conduct of their respective offices.

Sheriff

This elected official is the chief law enforcement officer of the county. However, a number of counties have organized county police departments, or rely primarily on the Kentucky State Police for law enforcement. When a county has a police department, or relies on the Kentucky State Police, the law enforcement authority of the sheriff is not diminished. But a sheriff's office in a small county often cannot generate the funds necessary to provide adequate law enforcement services. In such cases, the sheriff's activities in the law enforcement area may be sharply curtailed and his remaining primary function is that of tax collection. The sheriff collects the property tax for the state, the county, and for many special districts, deposits all funds collected, and distributes them to the proper agencies. Through the sheriff and appointed deputies, all such legal papers as subpoenas and summonses issued by the various courts regarding both civil and criminal actions are served upon the proper individuals. Deputies from the sheriff's office also serve as bailiffs for each court.

Jailer

Except in Jefferson and Fayette Counties, the jailer is one of the four elective county officials who are peace officers and possess the law enforcement powers of such offices. The others are the sheriff, the constables, and the coroner. Each county jailer has charge of the county jail and all persons therein, subject to the rule-making power of the fiscal court and the inspection powers of the county judge/executive (KRS 441.045). Any rules prescribed by the fiscal court must be consistent with minimum standards for jails established through regulation by the Department of Corrections (KRS 441.055). The jailer is responsible for receiving and keeping in the jail all persons lawfully committed to his custody until they are legally discharged. During their confinement, prisoners must be treated humanely and furnished with proper food and lodging. Upon death of a prisoner, the jailer is responsible for delivering the body to relatives or friends, if requested, or for having the individual decently buried in the county. Some counties cannot afford the expense of maintaining a jail according to state standards, and therefore send their prisoners to other counties for incarceration. In this case the fiscal court may appoint the jailer as the transportation officer responsible for transporting prisoners to other jails and to the courts. If the fiscal court chooses another party as the transportation officer, then the jailer serves as a bailiff to the Circuit and District Courts (KRS 71.050, 441.510).

Coroner

Although not so required by law, the coroner traditionally has been either a qualified medical doctor or a mortician. The coroner is required to hold an inquest (an examination of the cause of causes of death) under certain conditions specified by statute. This inquest is held before a jury of six reputable citizens of the county, summoned and sworn in by the coroner. These formal inquests occur when death appears to result from any of eighteen separate conditions which are set out in KRS 72.025. Among these conditions are homicide, suicide, drugs or poisons, fire or explosion, child abuse, drowning, accident, industrial toxics, and sudden and unexplained death.

County Surveyor

Although provided for in the Constitution, this position has been made essentially obsolete by modern developments. Rarely if every is this position filled. When it is, the holder is charged with performing any work in the field of civil engineering that he is lawfully ordered to do by the fiscal court of the county. The principal duties of this official include making surveys and keeping records of plats and explanatory notes of the surveys made. The surveyor is a member of all court-appointed commissions to locate, inspect, care for and report on bridges and other public improvements. If qualified, the county surveyor may also be employed as the county road engineer or county road supervisor, in which event he may receive a salary in addition to the fees allowed by law for service as county surveyor.

Constable

Constables are peace officers with broad powers of arrest and authority to serve court processes. The legislature has sought to curtail their traffic control activities, however, by restricting their fee for making arrests for violations involving a motor vehicle on a public highway to $.50 (KRS 64.190), and by allowing them to use blue lights and a siren only upon the approval of the fiscal court (KRS 189.950). Each magisterial district elects a constable, each with county-wide authority. Constables formerly served as bailiffs in the magisterial court, and presently may serve process for district court.

Property Valuation Administrator

This office was created by statute, although there was a previous constitutional office of county assessor, which was abolished in 1918. The property valuation administrator is a state officer and his deputies and assistants are unclassified state employees (KRS 132.370). He is popularly considered, however, to be a county official, since being elected by the voters of the county makes him to some extent amenable to local control. On the other hand, the influence of the State Revenue Cabinet over this officer is great, in that the department is responsible by law to issue certificates of qualification to property valuation administrators, based upon examinations "both written and oral and formulated so as to test fairly the ability and fitness of the applicant" (KRS 132.380). Having been certified and elected, the administrator, as an incumbent, has the distinct advantage over any ambitious opponent, as competitors must take an exam each time they run, while the incumbent does not have to be re-examined.

This office makes the annual assessment, for ad valorem tax purposes, of all real property in the county, except as may be otherwise expressly provided by law. This annual assessment is used not only by the county, but also by the state and special districts, for levying taxes, and may be used by any city in the county which so elects. The city is required to pay the office of the property valuation administrator for use of the assessment (KRS 132.285).

Qualifications, Election and Terms of Elective County Officials

To qualify for election to any of the county offices named in the current Constitution, a candidate must be twenty-four years of age (except the clerks of the county and circuit courts, who need only to be twenty-one), a citizen of Kentucky, a resident of the estate for two years, and a resident of the county and district for at least one year next preceding the election. To be eligible for the office of circuit clerk, a person must also procure a certificate from the judge of the court of appeals or a circuit judge that he or she has been examined and is qualified for the office (Section 100, Constitution). In addition, the County Surveyor must file with the County Clerk a certificate of competency from some college or from the circuit court of his county (KRS 73.200).

Elections of county officials are held on the first Tuesday after the first Monday of November in even-numbered years. The term of each officer is four years, beginning on the first Monday in January following election, except for the term of the property valuation administrator, which begins on the first Monday in December following election. In order to effect the transition from electing county officials in odd-numbered to even-numbered years, as required by a 1992 amendment to Section 99 of the Constitution, the term of officers elected in 1993 is five years. All incumbents may succeed themselves in office.

Other County Officials, Boards and Commissions

In addition to the elected county officials already enumerated, Kentucky law requires at least three other appointed officials in every county of the state: the county treasurer (KRS 68.010), the county road engineer – or, as an alternate, a county road supervisor (KRS 179.020) – and the county dog warden (KRS 258.195). In a county containing a city of the first class, Kentucky statutes also provide for a county purchasing agent (KRS 68.160). The fiscal court in a county containing a city of the first class may also appoint a county auditor (KRS 68.130). Any county may appoint a building inspector (KRS 67.410). In counties with a county police department (as provided under KRS 70.540) there is a further requirement that a county chief of police be appointed.

Each one of Kentucky's one hundred and twenty counties has, in addition to the several constitutional and statutory officials, one or more "independent" administrative boards or commissions with supervisory powers over certain services financed wholly or in part by county taxes. Two such boards are the county health board (KRS 212.020) and the county board of assessment appeals (KRS 133.020). Under certain circumstances a county may have a number of other boards. Among such boards might be a county police force merit board (KRS 78.410), one or more boards to administer parks or playgrounds (KRS 97.020), a county building commission (KRS 67.450), a planning commission (KRS 100.133), a county library board of trustees (KRS 173.340), a board of public utilities (KRS 96.740), and a home economics and agricultural extension district board (KRS 153.635).

Problems of Administering County Government

One of the real problems in county government, in Kentucky as well as in other states, has been the lack of a real chief executive or administrative head of county affairs. The duties as well as the powers of several county officials named in the Kentucky Constitution, and, to a great degree, even in the case of statutory county officials, are outlined in detail by statute law. The county judge/executive, as chairman of the fiscal court and chief executive of the county (KRS 67.710), is considered the head of the county government. Yet, neither the county judge/executive nor the fiscal court is accorded effective administrative control over a number of elected county officials, who are directly responsible to the voters and who derive administrative authority from either constitutional or statutory provisions, or both. The offices of sheriff and county clerk are two important fee offices which are independent of the county judge/executive and the fiscal court, although the fiscal court can exact some control by approving the budgets of these offices (KRS 64.530). The office of jailer used to operate on the basis of fees, but now the jailer is a salaried officer, and his budget is part of the county budget (KRS 68.240). Even so, if the jailer is an incompetent, or if he exposes the county to liability because of his actions, neither the county judge/executive nor the fiscal court has the power to remove him from office.

This lack of control holds, to a lesser extent, for the various county and county-city boards and commissions which, except for the appointment of their members and their financial dependence upon the county or the city and the county, are generally considered independent agencies of local government. These conditions result in a diffusion of administrative authority which has been classified at times as "no-executive" type of local government.[69]

Compensation of County Officials

Section 246 of Kentucky's 1891 Constitution as originally adopted provided a maximum limit of $5,000 per year as compensation of all officials and employees, except the governor, including those in local government. Amendment Fourteen, adopted in 1949, repealed this $5,000 salary limit and substituted limits of $12,000 per year for officials with statewide jurisdiction and mayors of cities of the first class; $8,400 for circuit judges; and $7,200 for all other officials, which, of course, included those within a county. In a 1962 landmark decision, the highest court in Kentucky decided that the maximum compensation provided in the Constitution could increase as the purchasing power of the dollar decreased. In this decision the courts said in part:

> The net result of our consideration is that the salary provisions of Section 246 of the Constitution may be interpreted and periodically applied to all constitutional officers in terms which will equate current salaries with the purchasing dollar in 1949 when Section 246 was adopted [*Matthews v. Allen*, Ky. 360 S.W.(2d) 135].

The Kentucky statutes now provide for the implementation of this "rubber dollar" theory. KRS 64.527 directs the Department of Local Government to compute annually the increase or decrease in the consumer price index of the preceding year by using 1949 as the base year. The department then notifies each fiscal court of the annual rate of compensation to which the county judge/executive, county clerk, sheriff, jailer, justices of the peace, magistrates, county commissioners, and coroner are entitled because of the increase in the index. The fiscal court is then permitted to set the annual compensation of these elected officials at a level no greater than that stipulated by the Department of Local Government.

As a practical matter, the salaries of magistrates and county commissioners, because they are part-time officials, are not set at the maximum level. Coroners' compensation is also limited because they are part-time officers, and minimum salary levels, related to training, are set out in KRS 64.185. But nearly all county clerks and a majority of sheriffs are able to earn the maximum constitutional salary out of the fee income of their offices. The county judge/executive, in turn, also receives the maximum salary in most counties, because KRS 67.705 provides that the county judge/executive shall not receive less than the county clerk, sheriff, or jailer. Jailers are on salary rather than fees, and in larger counties are likely to be paid the statutory maximum. In those counties where the jail has been closed, however, and the jailer does not transport prisoners, the jailer serves as a bailiff and his compensation is limited to $12,000 annually.

Liability of County Government

In general, the rule in Kentucky is that counties, unlike cities, are immune from any tort liability for negligence in the performance of governmental functions. On the other hand, in the instance of contracts, the Court of Appeals has held that a county is amenable to suit for violation of an express contract it is authorized to make.[70]

CHAPTER XI
LOCAL GOVERNMENT: CITIES

Kentucky historically has been a predominantly rural state. Many would maintain that it retains that character even though the 1970 census, for the first time, indicated that slightly over 50 percent of the state's population resided in urban areas. Since the U.S. Census Bureau specifically defines an urban place as one that has a population of 2,500 or more persons, this was the first time Kentucky's population could be labeled "urban." In 1990, only 51.8 percent of the state's population still meets this criteria and is classified as living in "urban" areas. Nationwide, however, over 80 percent of the population is classed as "urban".

With a statewide population of 3,685,296 in 1990, Kentucky's largest city, Louisville, had a population of 269,555. Its only other "urban" area with over 100,000 population is Lexington with a population of 225,366.

Constitutional Provisions

As has already been noted, Kentucky's Constitution provides for six classes of cities in the Commonwealth. In theory, a city's class is based upon its population. Actual practice allows some variation, but essentially cities are classed by Section 156 as follows:

CLASS	POPULATION
1st	over 100,000
2nd	20,000-99,999
3rd	8,000-19,999
4th	3,000-7,999
5th	1,000-2,999
6th	under 1,000

There are approximately 436 incorporated cities in Kentucky. Less than 10 percent of that total are found in the first three classes: first class (N=1), second class (N=11), and third class (N=19).

Section 156 of the Constitution also provides that the organization and powers of each of the six classes of cities shall be defined by general law, so that all "municipal corporations of the same class possess the same powers and be subject to the same restrictions." Kentucky's Constitutional method of assigning cities to classes, each to be governed by applicable state laws, is commonly known as the "classified charter" method. Another method, allowing a "special charter" specific to a particular city prevailed in Kentucky until the adoption of the 1891 Constitution. However, none of these old special charters remain in force, as the Court of Appeals has held that they were automatically abrogated by Sections 156 and 166 of the present Constitution and the statutes pursuant thereto (*Mullins v. Wilson*, 282 Ky. 316, 138 S.W.(2d) 478).

While Section 156 of the Constitution specifies the population limits for all classes of cities, the actual assignment of an individual city to a particular class is solely within the power of the General Assembly. No city may be transferred from one class to another except through an act of that legislative body. Also, when reclassifying a city, the General Assembly is not required to base such transfers on the most recent federal census if "other satisfactory information" is available. Through the years, because of positive and negative population changes in many cities, a sizable number of misclassified cities has resulted. A recent Legislative Research Commission report pointed out that approximately 98 cities were improperly classified in terms of the 1990 census. In 1986, as a response to the concern about the sizable number of misclassified cities, the General Assembly enacted companion statutes (KRS 81.032 - 81.036) which further define and regulate the classification process for cities.

The General Assembly and Cities

Under Dillon's Rule Kentucky cities are considered to be "creatures of the legislature." Although the General Assembly cannot by direct act incorporate a new city, the legislature does prescribe by general law the conditions and procedures for incorporation.

The 1980 General Assembly revised the procedure for municipal **incorporation**. The details of the two-step procedure are found in KRS 81.050 and 81.060. Essentially, a petition must be filed with the circuit clerk of the county in which the area is to be incorporated. The petition must be signed by two-thirds of the voters residing in the proposed city or by real property owners equal to the owners of at least two-thirds of the assessed value of the real property in the proposed city. The proposed city must have at least 300 residents.

The second step is the court hearing, which must be publicized and must occur not less than 20 days from the filing date of the petition. If the statute requirements of the petition, publication and other stipulations have been met, the court shall enter a judgment establishing the city. The clerk of the court will then certify a copy of the judgment to the Secretary of State.

No law requires a populated area to seek **incorporation**. In fact, there are areas within the state which the U.S. Census Bureau classifies as "urban" places which are not incorporated. When an area does seek to become incorporated, there are specific requirements which it must meet in order for the court to effectuate the incorporation. It must demonstrate: 1) the proposed incorporated area is able to provide the necessary city services to its residents within a reasonable period after its incorporation, and 2) whether the interest of other area and adjacent local governments is not unreasonably affected by the incorporation. Although the last requirement may seem rather discretionary, it does give statutory support to the concept that the act of incorporation does affect existing governmental units.

Just as important as creating cities is the ability to dissolve those cities which no longer provide the governmental services for which they are responsible. Many cities have come and gone during the life of the Commonwealth when they ceased to provide services, collect taxes or failed to elect municipal officers. **Dissolution** occurred despite the fact that until 1980 there was no statutory procedure for this action. KRS 81.094 provides two methods for the formal dissolution of a city:

(1) If a city "fails for one (1) year to maintain a city government by the election or appointment of officers and the levying and collection of necessary taxes, it may be dissolved by a judgment of the circuit court on petition filed by a bona fide resident of the city," or

(2) If a petition signed by registered voters of the city equal to 20 percent of the total number of votes cast in the last presidential election is presented to the mayor, and the city has no long-term debt, the question of dissolution shall be placed before the voters at a regular or primary election to determine the will of the citizens of that community. Any petition so filed must provide a description of the boundaries of the city and contain other relevant facts. If a city is dissolved by an election, the terms of the officers shall cease upon the certification of the election and all assets of the city shall become the property of the county in which the city is located.

Once incorporated and organized a city may make changes in its boundaries only by **annexation, reduction, transfer, merger or consolidation** with another city. Such changes, however, must be made in strict adherence to prescribed statutory procedures outlined in KRS Chapters 81 and 81A. Generally, the only way which a city may **expand or reduce** its boundaries on its own is through the process of **annexation**. The annexation statute for cities of the first class requires the city to actually provide for the extension of services into annexed areas and limits the tax rate therein to one commensurate with the services provided. For cities of the second through sixth classes, the residents of an area to be incorporated are granted the right to disapprove an annexation through a petition and referendum procedure. The statutes also prohibit any city from annexing another city. Cities sharing a common boundary are permitted to **transfer** incorporated territory from one to the other upon the enactment of identical ordinances in each city and the submission of a petition in support of the transfer. The petition must be signed by voters in the area to be transferred as prescribed in KRS 81.500. In addition to the transfer of property by contiguous cities, such cities are also permitted to **merge or consolidate** their governments as provided in KRS 81.410-81.440.

Forms of City Government

The statutes provide for four forms of city government: the **mayor-council** plan, the **mayor-alderman** (limited to cities of the first class) plan, the **commission** plan, and the **city-manager** plan. In each plan there is an elected mayor and an elected legislative body. Any city can create the non-elective position of city administrative officer. Such an officer is directly responsible to the executive authority of the city (i.e., either mayor or board of commissioners).

The only method of changing from one plan of government to another is by popular vote. Any approved change must stay in effect at least five years from the effective date of the last change.

Mayors are elected to four-year terms. A mayor must be at least twenty-five years of age, a qualified voter in the city and a resident of the city while in office. If a vacancy occurs in the office, the legislative body of the city shall appoint someone to fill the vacancy, until the next regular election.

Legislative body members are to be elected on an at-large basis. (That is, the entire electorate votes on each member). Each member serves a two-year term, must be at least twenty-one years old, a qualified voter of the city and a resident of the city while in office. If **vacancies** occur, the remaining member(s) of the legislative body select new members. Should all seats be vacant so that no member remains, the Governor is to appoint enough qualified persons to constitute a quorum. The new appointees will then select members to fill the remaining vacancies. The Governor also can appoint a new mayor when a vacancy exists in that office and the legislative body has not filled the vacancy within 30 days.

Under the **mayor-alderman plan**, first-class cities must have 12 council members. The **mayor-council plan** requires second, third and fourth-class cities to have at least 6 and no more than 12 council members, and fifth and sixth class cities are to have 6 council members. Each city organized under the **commission or city manager plan** has four commissioners.

Some of the governmental plans available to cities differ significantly. The **mayor-council and the mayor-alderman** plans are very similar in that both are examples of a strong mayor form of government. There is a definite separation of powers between the mayor and the city council, with the mayor possessing all executive powers, and the council all legislative powers. In the **commission form**, there is no separation of powers. A Board of Commissioners, composed of the mayor and the four commissioners, wields all executive, legislative and administrative powers. The mayor is little more than a figurehead but does have one of the five votes of the board of commissioners and presides over the meetings of the board. **City manager plan** cities are similar in organization with all executive, legislative and administrative authority vested in a board of commissioners, except that a city manager is appointed by the board of commissioners and charged with the administration of the city.

Home Rule

Kentucky cities have only those powers granted by the Constitution and those statutes enacted by the General Assembly. This principle, called Dillon's Rule, is used by many states to outline the authority of municipal governments. In Kentucky, the Supreme Court has stated that as a "general rule . . . a city possesses only those powers expressly granted by the Constitution and statutes plus such powers as are necessarily implied or incident to the expressly granted powers and which are indispensable to enable it to carry out declared objects, purposes and expressed powers."

Prior to 1980, the General Assembly granted powers to cities through very specific statutes granting a narrow range of powers to perform a specific function. Those statutes had been enacted over a period of almost 100 years and had become very obsolete, out of date, or conflicting with other statutes. It had become very difficult for cities to work with this vast body of law to determine what duties, powers and responsibilities they actually had. The 1980 General Assembly remedied this problem by repealing hundreds of these specific enabling statutes and replacing them with a single statute which grants general powers to cities. This grant was designed to give cities the broadest possible discretion in carrying out their affairs and is commonly called "**home rule**". The "home rule" grant for Kentucky cities is codified as KRS 82.082 and it states: "A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute." Since 1980, there have been only a handful of judicial challenges to this authority of cities. In each instance, the courts have upheld this statutory grant of authority to Kentucky's cities.

Budgetary Reporting

Each city must prepare an annual budget and submit its financial records as prescribed by statute for audit. The results of the audit are to be published locally and informational copies filed with the Department of Local Government in Frankfort. All cities are now required to maintain an accounting system on a fund basis and in accordance with generally accepted principles of governmental accounting. KRS Chapter 91A contains the primary financial requirements which are mandated for all city governments and are essential in establishing a uniform accounting and reporting procedure for cities.

County-City Consolidation (Background)

Since World War II, much as been written about the problems of so-called "fragmented government." The overlapping of jurisdictions and boundaries among a variety of local governmental units, the proliferation of such units in metropolitan areas and the resulting lack of proper coordination have been cited as principal culprits. For many years, metropolitan reformers have endeavored to unify, to reorganize, to enlarge or to consolidate local governmental jurisdictions. Their avowed goal was the creation of a more efficient, economical and cost-effective way of handling urban governmental functions. Claims have been made that reorganization and consolidation would not only provide improved public services, but that such an approach would also enable metropolitan government to achieve vast economies through large-scale operations and facilities. Advocates have also maintained that these economies would permit more specialized services unavailable to smaller units of government. Often cited as examples have been regional police and fire services, combined tourism efforts, volume purchasing alliances and extensive modern communications and dispatching systems. Other arguments for unified metropolitan government have emphasized that consolidation would aid in eliminating inequalities in financial burdens in areas and clearly establish responsibility for area-wide (metropolitan) policy.

On the other side of the issue is the argument that the "fragmented" character of metropolitan government is not necessarily obsolete and, in fact, has some important material advantages. Some studies indicate that very large municipal governments are neither economical nor do they necessarily provide improved services. While some economies of scale can definitely be produced by enlarging cities 25,000 population and under, there are indications that in cities of over a quarter of a million population, the cost of services tends to increase proportionately as size increases, while levels of services decrease.

Among the advantages most often offered in support of separate and independent local governments for the suburbs of a large city is that such an arrangement offers a variety of social, psychological and political values. Even the facing of problems in a fragmented governmental arrangement can aid citizens in developing a sense of community identity and individual involvement. The existence of a number of local governments not only provides forums for public airing of grievances, but also endows individuals and citizens' groups with a sense of effectiveness as they participate in local public affairs. Under fragmented government, a large number of groups and individuals have the opportunity to express themselves and to influence government policy. This is particularly appropriate to minorities, who may well exert considerable influence in small units of government.

One interesting method designed to solve metropolitan problems has appeared in the form of city-county consolidation. Although merger is by no means a new concept, only four such mergers were implemented before 1900 in the entire nation.

Approximately three-fourths of the metropolitan areas in the United States are contained within single counties. Obviously this situation results in the duplication of both taxes and services. It has thus frequently been advocated that county governments be given the powers of cities and that the governmental structure of the area be reorganized through consolidation of the city and county governments.

It is inevitable that such consolidation produces many new problems. Some of the more obvious questions involve the redesigning of the governmental structure — how will the offices and agencies of the old governments be combined, and consequently, how will the restructuring of the authority of certain elective offices be managed while enlarging the entire governmental operations?

Urban-County and Charter County Government in Kentucky

The only successful effort at city-county consolidation in Kentucky has been in Fayette County, whose only city was Lexington. Previously it has been pointed out that all incorporated municipalities in Kentucky are creatures of the state and classified according to population into six groups. No legal authority had been granted for county-city consolidation until the 1970 legislative session when the General Assembly passed House Bill 543, known as the Peake-McCann Bill. As originally introduced, this bill was in the form of an enabling act permitting counties containing cities of the first and second classes to merge their city and county governments into "**urban-county governments**." It passed the House in this form but the Louisville and Jefferson County delegation in the Senate objected to the inclusion of counties containing cities of the first class, apparently fearing possible consolidation within their districts. As Jefferson was the only county containing a city of the first class at the time, the bill was amended to exclude such counties and passed both Houses as KRS Chapter 67A near the end of the session.

The Merger Process

As established in KRS Chapter 67A, the process of merger begins with a petition signed by a number of registered voters equal to at least five percent of those voting in the preceding general election.

The fiscal court of the county and council of the largest city within the county are required to appoint a representative commission, "composed of not less than twenty (20) citizens, which shall devise a comprehensive plan of **urban-county** government." The law further requires that the plan prepared by this commission "shall be advertised at least ninety (90) days before a general election at which the voters will be asked to approve or disapprove the adoption of the plan." Following the election and the certification of its results by the County Board of Election Commissioners, if it appears that "a majority of those voting are in favor of adopting the plan, the commissioners shall enter such fact to record and shall organize the **urban-county** government" (KRS 67A.020). The effective date of consolidation follows the election and qualification of county officers at the next regularly scheduled election. At that time the **urban-county** government immediately becomes the effective government for the county and "all of the debts, corporate property, franchises, and rights of any municipality within the county . . . [are] assumed by the **urban-county** government" (KRS 67A.030).

As previously mentioned, the first merged government created under the new law was the Lexington-Fayette Urban County Government. Since the City of Lexington was the only incorporated municipality in Fayette County, the process of merger was simplified. It should also be noted that one of the probable reasons the push for the Lexington and Fayette County merger was successful may well have been that Lexington had reached a point where the population of the city dictated that it should have been classified as a city of the first class. Since Louisville had been the only city of the first class in Kentucky, all legislation applying only to counties containing a city of the first class had been drafted and enacted solely with the city of Louisville in mind. Many of these existing laws could not have been easily adopted to solve the problems and needs of Lexington and Fayette County. Conversely, in all probability Jefferson County and the city of Louisville would not have wanted change in many of these same laws.

Although the **urban-county** form of government was approved for Fayette County on November 7, 1972, it could not be put into effect until January 1, 1974. The specific provision of the law is that such a merger is to become effective "upon the election and qualification of county officers at the next regularly scheduled election at which county officers shall be elected, as provided in Section 99 of the Constitution" (KRS 67A.030). This requirement was helpful, because the lapse of time allowed local officials and supporters of the merger thirteen months in which to work out the necessary details for implementing the new system of government. The time lag also provided opportunity for appellate level court decisions testing the constitutionality of the new charter. It took no less than a 1973 Kentucky Court of Appeals (equivalent to today's Supreme Court) decision in the case of *Holsclaw v. Stephens* to lay to rest the questions regarding the constitutionality of **urban county** governments. The court said in a fairly lengthy decision, that the Lexington-Fayette urban-county government charter was a new and unique form of local government. The court indicated that it was "neither a city government nor a county government" but an "entirely new creature in which are combined all the powers of a county government and all of the powers possessed by that class of cities to which the largest city in the county belongs." As a footnote to this issue, it is interesting to note that it was not until the passage of a 1992 constitutional amendment on elections that the words "urban-counties" actually appeared in the Kentucky Constitution. The amendment of constitutional Sections 148 and 165, which revamped the state's timetable for state and local elections, finally gave constitutional inference of the existence of these types of local government units.

Since the 1972 creation of the Lexington-Fayette Urban County government, six other areas have gone through the process in attempting to form some type of merged or consolidated governments. The most recent being in 1990 with the failure of Bowling Green/Warren County and Owensboro/Daviess County proposals. This particular issue seems to still be simmering in Louisville and Jefferson County with the recent creation of a Chamber of Commerce study group which is studying the feasibility of governmental consolidation in that county. Louisville and Jefferson County voters have been faced with the question of implementing forms of merged government on two different occasions. On both occasions the proposals were defeated and left serious divisions between the various community leaders and interest groups. But one result of these failed efforts was the creation of a twelve year city-county compact which provides for the consolidation or merger of duplicative services or agencies and the sharing of specified tax revenues by the city and county.

Charter County Government

In recent years, as more and more communities have attempted to implement merger proposals, there has been increasing concern as to whether KRS Chapter 67A could ever be actually utilized by other communities. It has been argued that this chapter has been so carefully drafted to meet the specific needs of the Lexington-Fayette County government that no other community in the state will ever be able to fully meet all of the requirements of this chapter. Thus, in response to this argument, the 1990 General Assembly enacted legislation which authorizes the creation of "charter county" governments (KRS 67.825-67.875). These statutes offer communities the opportunity to form merged or consolidated governments without the regulatory burdens of KRS Chapter 67A. This form of government is available in all counties except those containing cities of the first class or existing urban county governments.

BIBLIOGRAPHY

Advisory Commission on Intergovernmental Relations. *Federal Regulation of State and Local Governments: The Mixed Record of the 1980's*, Washington, DC: Advisory Commission on Intergovernmental Relations, July, 1993.

______. *Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues*, Washington, DC: September, 1992.

______. *Local Government Autonomy: Needs for State Constitutional, Statutory, and Judicial Clarification*, Washington, DC: October, 1993.

______. *Significant Features of Fiscal Federalism, 1993*, 2 Volumes.Washington, DC: September, 1993.

______. *State-Local Relations Organizations: The ACIR Counterparts*, Washington, DC: February, 1991.

Advisory Committee on the Judicial Department. *A Tentative Draft of Proposed Judicial Article*, Frankfort, Ky.: Legislative Research Commission, 1957.

Associated Press. "Conference Endorses 'Super Tuesday' in 1992," Louisville *Courier-Journal*, 26 March 1990.

Beers, Howard W., editor. *Kentucky – Designs for Her Future*, Lexington, Ky., 1954.

Bivin, William E. "The Historical Development of Kentucky Courts," *47 Kentucky Law Journal 465* 1959.

Brown, Lawrence, James W. Fossett, and Kenneth T. Palmer. *The Changing Politics of Federal Grants*, Washington, DC: The Brookings Institution, 1984.

Bryce, James. *The American Commonwealth*, Volume I, New York: McMillan Press, 1921.

Campbell, Kathy. "Local government and the Kentucky Constitution," *A Citizens' Guide to the Kentucky Constitution*, Research Report No. 137, Frankfort, Ky.: Legislative Research Commission, 1989.

Channing, Steven A. *Kentucky: A History (The State and the Nation Series)*, New York: W. W. Norton and Co., Inc., 1977.

Clark, Thomas D. *A History of Kentucky*, Lexington, KY.: John Bradford Press, 1960.

Clark, Thomas D. "The Kentucky Governorship: An Overview," essay in Lowell Harrison, *Kentucky's Governors 1792-1985*, Lexington, KY.: The University Press of Kentucky, 1985.

Collins, Richard. *History of Kentucky*, Louisville, KY.: 1877.

Connelley, William, and E. Merton Coulter. *History of Kentucky,* 5 Volumes, New York: American Historical Society, 1922.

Council of State Governments. The, *Annual Report, 1978-1979*, Lexington, Ky..

______. *The Book of the States*, 1994-95 Edition, Lexington, Ky..

______. "States in the International Arena," *Journal of State Government,* Vol. 64, No. 4, October - December, 1991 Lexington, Ky.

Dillon, John F. *Commentaries on the Laws of Municipal Corporations*, Fifth Edition, Boston, Mass: 1911.

Elazar, Daniel. *American Federalism: The View from the States*, New York: Thomas Y. Crowell Co., 1966.

Encarta multimedia encyclopedia Microsoft, Redmond, WA, 1994.

"First Constitution of Kentucky," *Kentucky Revised Statutes*, Volume 1.

Fleming, James T. and John E. Reeves. *A Comparison. . . The Present – The Proposed Kentucky Constitutions*, Informational Bulletin No. 52, Frankfort, Ky.: Kentucky Legislative Research Commission, 1966.

Grodzins, Martin. *The American System: A New View of Government in the United States*, edited by Daniel Elazar Chicago, IL: Rand McNally and Co., 1966.

Hanson, Russell L. "The Intergovernmental Setting of State Politics," Chapter 2 in Virginia Gray, Herbert Jacob, and Kenneth Vine, *Politics in the American States: A Comparative Analysis*, Fourth Edition Boston, Mass: Little, Brown and Co., 1983.

Harrison, Lowell. *Kentucky's Governors 1792-1985*, Lexington, Ky.: The University Press of Kentucky, 1985.

Ireland, Robert M. *The County in Kentucky History*.

Jewell, Malcolm E., and Everett W. Cunningham. *Kentucky Politics*, Lexington, Ky.: University Press of Kentucky, 1968.

Kentucky Cabinet for Economic Development. *Kentucky Facts*, 1994.

______. *1994 Kentucky Deskbook of Economic Statistics*

______. *1994 Kentucky Directory of Manufacturers*.

Legislative Research Commission. *Bill Drafting Manual*, Informational Bulletin No. 117, Frankfort, Ky.: Legislative Research Commission, 1991.

______. *Proposed Revision of the Constitution of the Commonwealth of Kentucky*, Constitution Revision Assembly Document, Frankfort, Ky., 1966.

Louisville *Courier-Journal*. "State Districting Plan Cited for Fairness," February 8, 1963.

Morrison, Samuel Eliot. *The Oxford History of the American People*, New York: Oxford University Press, 1965.

Phillips, Jewel Cass. *State & Local Government in America* New York: 1954.

Sexton, Robert. "Kentucky Politics and Society 1919-1932," Ph.D. thesis, University of Washington, 1970.

Shannon, Jasper B., and Ruth McQuawn. *Presidential Politics in Kentucky 1824-1948*, Lexington, Ky.: University of Kentucky Bureau of Government Research, 1950.

Singleton, J. Allen. "Population and Politics," Louisville, Ky.: Kentucky Academy of Science, 1976.

Smith, Donna K. *Interstate Cooperation: Kentucky and the Compact*, Informational Bulletin No. 64, Frankfort, Ky.: Legislative Research Commission, 1968.

Swartz, Thomas R. and John E. Peck, editors. *The Changing Face of Fiscal Federalism*, Aront, N.Y.: M. E. Sharpe, Inc., 1990.

Tapp, Hamilton and James C. Klotter. *Kentucky Decades of Discord, 1865-1900*, Frankfort, Ky.: Kentucky Historical Society, 1977.

"The Constitution of the United States of America" and "Constitution of Kentucky." *Kentucky Revised Statutes*, Volume I Charlottesville, Va.: The Michie Co., 1992.

Trout, Allen M. "Your Kentucky Constitution," Louisville *Courier-Journal*, July 10, 1966.

U.S. Department of Commerce, Bureau of the Census. *State and Metropolitan Area Data Book 1986*, Washington, DC: Government Printing Office, 1986.

______. *Statistical Abstract of the United States 1993*, Washington, DC: Government Printing Office, 1993.

______.. *Statistical Abstract of the United States 1994*, Washington, DC: Government Printing Office, 1994.

U.S. Department of Commerce, Bureau of Economic Analysis. *Survey of Current Business*, Washington, DC: Government Printing Office, Nov. 1993.

Van Horn, Carl E. *Policy Implementation in the Federal System*, Lexington, Mass: D. C. Heath and Company, 1979.

Wallis, Frederick and Hamilton Tapp. *A Sesqui-Centennial History of Kentucky*, Vol. 2 Hopkinsville, Ky.: The Historical Record Association, 1945.

Watlington, Patricia. *The Partisan Spirit: Kentucky Politics 1779-1792*, Atheneum, N.Y.: McClelland and Stewart, Ltd., 1972.

Willis, George L., Sr. "Kentucky Constitutions and Constitutional Conventions," *Register of the Kentucky Historical Society*, January, 1931.

Wilson, Mary Helen. *A Perspective of Constitutional Revision in Kentucky*, Informational Bulletin No. 119, Frankfort, Ky.: Legislative Research Commission, 1976.

Wright, Deil S. *Understanding Intergovernmental Relations*, Second Edition, Monterey, CA: Brooks/Cole Publishing Co., 1982.

Wrobel, Sylvia and George Grider.ville, Ky.: The Cumberland Press, 1974.

APPENDIX A

CONSTITUTIONAL AMENDMENTS ADOPTED SINCE 1891

Year Adopted	Section(s) Affected	Purpose
1903	181	Authorize the General Assembly to provide by general law for levying by cities and counties of license fees and franchise taxes based on income derived from property or other sources.
1909	157a	Permit state to give, pledge, or lend credit to counties for road purposes and permit counties to levy a tax of 20 cents per $100 of assessed property value to pay principal and interest on voted road and bridge bonds.
1915	171	Permit classification of property for tax purposes.
1915	253	Permit use of prisoners for road work.
1917	201	Permit telephone companies, under certain conditions, to buy or lease competing companies.
1919	227	Permit removal of local law enforcement officers for neglect of duty.
1919	226A	Prohibit manufacture, sale, or transportation of alcoholic beverages.
1935	226A	Repeal prohibition.
1935	244A	Permit old age pensions.
1941	186	Permit ten percent of money appropriated by the legislature for school purposes to be used in an equalization fund, instead of being divided on a per capita basis.
1941	147	Permit the use of voting machines.
1945	147	Authorize the General Assembly to provide for absentee voting.
1945	230	Guarantee that receipts from certain tax sources shall be placed in the highway fund.
1949	246	Repeal the $5,000 salary limit and substitute limits of $12,000 per year for officials with statewide jurisdiction and mayors of first class cities, $8,400 for circuit judges, and $7,200 for all other officials.
1949	186	Changes from ninety to seventy-five the percentage of state appropriated school funds to be divided on a per capita basis.
1953	186	Repeal provisions of Section 186 which required school funds to be distributed on a per capita basis.

1955	145	Permit persons eighteen years of age or older to vote, provided they meet other qualifications, and remove the word "male" from the constitutional description of voters.
1955	170	Exempt all household goods from taxation.
1969	172A	Permit agricultural land in urban areas to be assessed for taxation at its value for agricultural purposes and permit a unit of local government to tax property at different rates, in different areas, based upon services.
1971	170	Exempt from taxation up to $6,500 of the assessed value of a single family residence owned and occupied by a person age 65 or older.
1975	109-139, 141, 143	Restructure the state court system.
1975	170	Extend "homestead exemption" to residences other than single family dwellings.
1979	256	Increase from two to four the number of amendments to be considered at any one referendum.
1979	30, 31, 36, 42	Change from odd-year to even-year for election of members of the General Assembly.
1981	170, 172B	Provides certain property tax exemptions for residents age 65 and older and for the disabled. Permits property tax moratoriums under certain circumstances to encourage repair and renovation of properties.
1984	99	Permit sheriffs to succeed themselves.
1986	160	Permit mayors of cities of the first and second classes to run for election for three successive terms.
1988	19	Limit the mining of coal conveyed by any broadform deed to methods of coal extraction utilized in the area at the time the deed was signed.
1988	226	Permit the General Assembly to establish a Kentucky state lottery, alone or in conjunction with other states.
1990	170	Exempt from property taxation all real property owned and occupied by, and all personal property owned by, institutions of religion.
1992	226	Permits the General Assembly to establish and regulate charitable gaming.

1992	70-74, 82-87, 91, 93, 94, 95, 97, 99, 148, 167	Omnibus reform of Executive Branch and election schedule, including: succession for statewide officers; joint election of Governor and Lieutenant Governor; gubernatorial disability and absence from the state; abolition of elected Superintendent of Public Instruction; duties of Lieutenant Governor; and even-year elections for all but statewide officers.
1994	156, 156a, 156b, 157, 157b, 158	Changes methods of classifying cities, grants "home rule" to cities, relaxes limitations of local government debt capacity, and requires balanced budgets by local governments.

CONSTITUTIONAL AMENDMENTS SUBMITTED TO POPULAR VOTE SINCE 1891 BUT DEFEATED

Year Submitted	Section(s) To Have Been Affected	Purpose
1897	181	Would have permitted municipalities to tax property on the basis of income.
1905	147	Would have required voice voting instead of secret ballot.
1907	145	Would have made payment of taxes a prerequisite to voting.
1913	171	Would have permitted to classification of property for tax purposes. *
1921	186	Would have provided that ten percent of the common school fund could be distributed on other than a per capita basis.
1921	91	Would have removed the Superintendent of Public Instruction from the list of elective officials.
1923	145	Would have permitted women to vote and hold office.
1925	246	Would have raised the $5,000 salary limit for certain specified officials.
1927	147	Would have permitted absentee voting.
1927	246	Would have abolished the $5,000 salary limit and substituted a provision that the General Assembly should fix reasonable compensation.
1929	256	Would have removed the two-amendment restriction.

1929	246	Would have removed the salary limit on Judges of the Court of Appeals.
1931	158	Would have raised the debt limits of cities and counties in certain cases.
1933	172	Would have permitted the General Assembly to exempt real and personal property from taxation by the state.
1937		Would have permitted the General Assembly to reorganize local government and would have permitted consolidation of cities and counties.
1937	256	Would have removed the limit on the number of constitutional amendments to be submitted at one time.
1939	145	Would have made women eligible to hold public office.**
1939		Would have authorized and directed the General Assembly to provide aid to dependent children and needy blind.**
1943	54	would have permitted the General Assembly to pass a compulsory workers' compensation law.
1943	246	Would have removed the $5,000 salary limit.
1951	256	Would have permitted an unlimited number of amendments to be submitted at one time and changed the time and manner of voting on amendments.
1953	91 & 93	Would have removed the Secretary of State, Treasurer, Commissioner of Agriculture, Labor and Statistics, and the Superintendent of Public Instruction from the list of elective state officers.
1957	91 & 93 95 & 96	Would have abolished the elective Superintendent of Public Instruction and established in his place a Commissioner of Education appointed by a nine-member Board of Education.
1959	New	Would have established a sales tax to provide a veterans' bonus.***
1959	99	Would have made sheriffs eligible to succeed themselves.
1963	246	Would have abolished the salary limit.
1963	256	Would have permitted the submission of five amendments to be voted on at one time.
1969	42	Would have authorized the General Assembly to meet annually for sixty legislative days and described a legislative day as one on which at least one house was in session.

1973	91, 93, 95, 99, 183 & 209	Would have deleted the requirement that the Superintendent of Public Instruction be elected; allowed sheriffs to succeed themselves; established a seven-member State Board of Education; abolished the Railroad Commission.
1973	32, 36 & 42	Would have required the General Assembly to meet annually for not longer than forty-five legislative days, which need not be consecutive, nor longer than four months (six months of approved by two-thirds of the members of both houses); required legislators to have resided in their districts for two years rather than one year prior to election.
1981	71, 82, 93 & 99	Would have permitted statewide constitutional officers to serve two successive terms and would have permitted sheriffs to succeed themselves.
1986	91, 93, 95 & 183	Would have constitutionally established an appointed State Board of Education, which would have hired a state Superintendent of Public Instruction; would have abolished the constitutional office of elected Superintendent of Public Instruction.
1990	36	Would have allowed the General Assembly to call itself into extraordinary session.
1990	28	Would have allowed the General Assembly to create a system whereby it or a body it designated could reject administrative regulations promulgated by an agency of the Executive Branch.
1990	****	Would have altered the structure and powers of local government.
1992	91, 93, 94, 95, 201, 209 & 218	Would have deleted the election of the Secretary of State, Treasurer, Commissioner of Agriculture, Superintendent of Public Instruction, and Railroad Commission.

* Through error was not publicized as required by Section 256 of the Constitution and although placed on the ballot, voted upon and passed, was declared invalid. See *McCreary v. Speer*, 156 Ky. 783, 162 S.W. 99 (1914).

** Through error was not publicized as required by Section 256 of the Constitution and thus could not be placed on the ballot. See *Arnett v. Sullivan*, 279 Ky. 720, 132 S.W. 2d (1939).

*** Although ratified by the voters, this amendment was declared invalid by the Kentucky Court of Appeals. The Court held the subject of the amendment to be one properly addressed by statute rather than by a constitutional amendment. See *Stovall v. Gartrell,* 332 S.W. 2d 256 (Ky. 1960).

**** would have repealed and replaced nine sections and amended two others. See 1990 Kentucky Acts, Chapter 150.

FOOTNOTES

[i] *Encarta* multimedia encyclopedia (Microsoft, Redmond, WA), 1994.

[ii] Kentucky Cabinet for Economic Development, *Kentucky Facts*, 1994.

[iii] Kentucky Tourism Cabinet, Department of Travel Development (listing of top 25 Kentucky attractions by visitation in 1993).

[iv] Between 1970 and 1980, the U.S. population grew by 11.4%, Kentucky's by 13.7%, and the South's by 20% (by the Census definition of the South, comprising 16 states and the District of Columbia). U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993* (U.S. Government Printing Office, Washington, DC, 1993).

[v] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993*.

[vi] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993*.

[vii] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993*.

[viii] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993*.

[ix] Staff calculation from 1990 Census data (*Summary Tape File 3*).

[x] Kentucky Cabinet for Economic Development, *Kentucky Facts*, 1994.

[xi] Kentucky Cabinet for Economic Development, *1994 Kentucky Deskbook of Economic Statistics*.

[xii] National data in preceding paragraphs from U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Nov. 1993; state data from Kentucky Cabinet for Economic Development, *1994 Kentucky Deskbook of Economic Statistics*.

[xiii] Wholesale and retail trade are variously grouped as one industry (Trade) or counted as separate industries. Here, they are counted as one.

[xiv] Kentucky Cabinet for Economic Development, *1994 Kentucky Directory of Manufacturers*.

[xv] U.S. Department of Commerce, Bureau of Economic Analysis, Aug. 1994 release.

[xvi] U.S. Department of Commerce, Bureau of Economic Analysis, Aug. 1994 release; and Kentucky Cabinet for Economic Development, *1994 Kentucky Deskbook of Economic Statistics*.

[xvii] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1993*.

28 *The Book of the States*, 1994-1995, Vol. 30, Table 33, p. 113.

29 *Ragland v. Anderson*, 125 KY. 141 (1907).

30 See report of Commission on Reapportionment and "State Districting Plan Cited for Fairness," Louisville *Courier-Journal*, Feb. 8, 1963.

31 See predecessor of present document, *Kentucky Government*, 7th edition, revised, 1973 Legislative Research Commission, Informational Bulletin No. 96, p. 36.

32 Louisville *Courier-Journal*, July 27, 1971.

33 A second ten-year plan redistricting plan was enacted in the 1992 Regular Session of the General Assembly. The new plan affected only two House districts and two Senatorial districts. No county boundaries were involved in the amendment to the House districts; the amendment to the Senatorial districts divided one less county than the 1991 plan.

34 OAG 68-207: *Rhoades v. Miller* (1944), 298 Ky. 346, 192 S.W. (2d) 248; *Chenault v. Carter* (1960), 332 S.W. (2d) 623.

35 Table 3.2, pp. 109-111, *The Book of the States*, 1994-95 Edition, Vol. 30, Council of State Governments.

36 Four hundred and sixty bills were passed by the General Assembly in 1994; two were vetoed by the Governor and the vetoes were sustained.

37 *Bill Drafting Manual*, published by the Legislative Research Commission, Informational Bulletin No. 117, (Revised), October 1991, Frankfort, Ky.

38 *The Book of the States*, 1978-1979, Vol. 22, The Council of State Governments, Lexington, Ky., pp. 64-71.

39 Speaker of the House and later Lieutenant Governor Harry Lee Waterfield spearheaded this movement.

40 This superseded a comparable publication, *The Legislative Digest*, privately published and sold, under contract, to the General Assembly.

41 The American Legislators' Association was founded in 1925, much later than the National Governors' Conference, formally organized in 1908, although both organizations helped in the formation and later support of its Council of State Governments.

42 *The Book of the States*, 1994-95, p. 627.

43 *Annual Report, 1978-1979*, Council of State Governments, p. A-3.

[xviii] William E. Bivin, "The Historical Development of Kentucky Courts" 47 *Kentucky Law Journal 465 (1959).*

[xix] Thomas D. Clark, *A History of Kentucky,* pp. 142-144.

[xx] Clark, p. 145.

[xxi] Advisory Committee on the Judicial Department, *A Tentative Draft of Proposed Judicial Article, (Frankfort: Legislative Research Commission, 1957),* pp. 1-2

[xxii] Legislative Research Commission, *Proposed Revision of the Constitution of the Commonwealth of Kentucky* (Constitution Revision Assembly Document, Frankfort, 1966), Article VI.

[xxiii] Previously the Clerk of the Court of Appeals, then Kentucky's highest court was elected by popular statewide vote at the same time of the gubernatorial election.

xxiv

[xxv] Hanson, Russell L., "The Intergovernmental Setting of State Politics," Chapter 2 in Gray, Virginia; Jacob, Herbert; and Vine, Kenneth N., <u>Politics in the American States: A Comparative Analysis, Fourth Edition</u> (Boston: Little, Brown and Company, 1983), p. 41.

[xxvi] Grodzins, Martin, <u>The American System: A New View of Government in the United States</u>, edited by Daniel Elazar (Chicago: Rand McNally and Co., 1966), p. 8.

[xxvii] Clark, Thomas D., <u>A History of Kentucky</u>, (Lexington, Kentucky: The John Bradford Press, 1950). pp. 365 - 366. For federal grant programs that predated the Morrill Act, see Grodzins, <u>op. cit.</u>, pp. 31 - 37.

[xxviii] Clark, <u>op. cit.</u>, p. 385.

[xxix] Grodzins, <u>op. cit.</u>, p.48.

[xxx] 1956 U.S. Code Congressional and Administrative News (St. Paul, MN and Brooklyn, NY: West Publishing Company and Edward Thompson Co., 1957) pp. 433-435.

[xxxi] Palmer, Kenneth T. "The Evolution of Grant Policies" in Brown, Lawrence; Fossett, James W.; and Palmer, Kenneth T., The Changing Politics of Federal Grants (Washington, DC: The Brookings Institution, 1984), p. 6.
[xxxii] Advisory Commission on Intergovernmental Relations [ACIR], Significant Features of Fiscal Federalism, 1993, Volume 2, pp. 3-4 (Washington, DC: ACIR, September, 1993).

[xxxiii] ACIR, Federal Regulation of State and Local Governments: The Mixed Record of the 1980's (Washington, DC: ACIR, July 1993), p. 1.

[xxxiv] 469 U.S. 528 (1985).

[xxxv] See ACIR, Federal Regulation of State and Local Governments., pp. 73 - 76.

[xxxvi] ACIR, Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues (Washington, DC: ACIR, September 1992), p. iii.

[xxxvii] Ibid.

[xxxviii] Wisconsin, Legislative Reference Bureau, Financing State Mandates, Informational Bulletin 90-IB-4 (Madison, WI: Legislative Reference Bureau, November, 1990).

[xxxix] ACIR, State-Local Relations Organizations: The ACIR Counterparts (Washington, DC" ACIR, February, 1991), p.5.
[xl] Smith, Donna K., Interstate Cooperation: Kentucky and the Compact, Informational Bulletin No, 64 (Frankfort: Legislative Research Commission, 1968), p. 1.

[xli] Jones, Benjamin J. and Reuler, Deborah, "Interstate Compacts and Agreements" in The Council of State Governments, The Book of the States, 1990-91 (Lexington, KY: The Council of State Governments, 1990), p.565.

[xlii] Schweke, William; Rist, Carl; and Dabson, Brian, Bidding for Business: Are Cities and State Selling Themselves Short? (Washington, DC: Corporation for Enterprise Development, 1994), p. 15.

[xliii] Jones, Benjamin J., Interstate Compacts and Agreements, in The Council of State Governments, The Book of the States, 1992-93 (Lexington, KY: The Council of State Governments, 1992), p. 649.

[xliv] Rose, John "Eck," "Foreign Relations at the State Level" in The Council of State Governments, Journal of State Government, Vol. 64, No. 4, Oct. - Dec., 1991, pp. 110 - 117. See also, ACIR, "State and Local Governments in International Affairs," in Intergovernmental Perspective, Vol. 20, No. 1 (Fall 1993 - Winter 1994), pp. 33 - 37.

[xlv]Stempel, John D. "Losing It: The Decentralization of American Foreign Policy" in The Council of State Governments, op. cit., p. 123.
[60] Howard W. Beers, editor, *Kentucky — Designs for Her Future*, Lexington, 1954, p. 15.
[61] William Connelley and E. Merton Coulter, *History of Kentucky* (five volumes), American Historical Society, New York, 1922, I, p. 216.
[62] Robert M. Ireland, *The County in Kentucky History*, p. 2.
[63] Richard Collins, *History of Kentucky*, Louisville, 1877.
[64] John F. Dillon, *Commentaries on the Laws of Municipal Corporations*, Fifth ed., (Boston, 1911) p. 448.
[65] For a very good, comprehensive, and detailed study on county government in Kentucky, consult Informational Bulletin No. 114, *Duties of Elected County Officials*, Legislative Research Commission (January, 1993), Frankfort, Ky.
[66] 5 *Northern Kentucky Law Review* 107 (1978).

[67] Changes in the judicial system under this amendment became effective at the appellate level on January 1, 1976, and at the trial level January 2, 1978. The judicial functions of the former county judges were assumed by the new district courts.

[68] If a clerk other than the county clerk is appointed as clerk of the fiscal court, that body may require additional duties of that person (KRS 67.120).

[69] Jewel Cass Phillips, *State & Local Government in America* (New York, 1954), p. 406.

[70] *Marion County v. Rives and McChord*, 133 Ky. 477, 118, S.W. 309; *Commonwealth v. Sizemore*, 269 Ky. 722, 108 S.W. (2d) 733.